

Toolkit on combating hate speech during electoral processes

2022



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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during electoral processes
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Contents

FOREWORD	7
PREFACE	9
CHAPTER 1 – HATE SPEECH AND ELECTORAL CAMPAIGNS	11
CHAPTER 2 – HATE SPEECH AND ELECTION MANAGEMENT BODIES	41
CHAPTER 3 – EXPERIENCE OF GEORGIA: HATE SPEECH DURING ELECTORAL PROCESSES	65
APPENDIX – TRAINING MODULE	83

FIGURES

Figure 1: Systematic approach to counter hate speech	41
Figure 2: Core engine of hate speech	42
Figure 3: Hate speech pyramid	43
Figure 4: Definition of hate crime	44
Figure 5: Hate crimes reported to the police: bias motivation	46
Figure 6: Hate crimes – By type of crime	46
Figure 7: 2020 Presidential Elections – Hate speech on Twitter – monitoring results	54
Figure 8: Hate speech in social media against women during Georgian 2020 elections	55

TABLES

Table 1: Biased attitudes and acts of bias	44
Table 2: Hate crime legislation in Germany	45
Table 3: Hate crime cases recorded by Georgian police	46
Table 4: Threshold test for hate crimes	47
Table 5: European Convention on Human Rights: Freedom of expression	47
Table 6: Hate speech incidents against EMBs – Examples	49
Table 7: Risk assessment – Hate speech against EMBs	50
Table 8: Elements of a Code of Conduct for EMBs	51
Table 9: Training of EMBs on hate speech	52
Table 10: Analysis of hate speech risks in electoral campaigns	53
Table 11: ECRI General Policy Recommendation No. 15 on Combating Hate Speech: monitoring hate speech	55
Table 12: How to recognise hate speech directed against women during election campaigns	56
Table 13: ECRI General Policy Recommendation No. 15 on Combating Hate Speech: effective action against hate speech	56
Table 14: ECRI General Policy Recommendation No. 15 on Combating Hate Speech: civic education	57
Table 15: ECRI General Policy Recommendation No. 15 on Combating Hate Speech: Codes of Conduct and penalties	58
Table 16: ECRI General Policy Recommendation No. 15 on Combating Hate Speech: regulation of media	61

Division of Elections and Participatory Democracy (Directorate General Democracy)

The Division of Elections and Participatory Democracy (Directorate General of Democracy and Human Dignity) at the Council of Europe provides advice and technical assistance to the member states on various aspects of elections, such as capacity building of electoral stakeholders and raising voter awareness.

In the field of capacity building, the division works closely with election commissions to ensure that election commissioners are familiar with domestic and international standards and good practices and that they observe voters' rights when performing their duties. The division also works to enhance the capacities of other electoral stakeholders, such as the bodies in charge of oversight of campaign and party finances (for example, the State Audit Office of Georgia) or media coverage of election campaigns (such as the Audiovisual Council of the Republic of Moldova). In this field, special attention is paid to enhancing the capacities of non-governmental organisations (NGOs) in charge of domestic observation of elections.

In order to guarantee access to information for domestic observers, an e-learning course with certification based on two handbooks on report writing techniques and international standards in elections has been put at their disposal. An e-learning course aimed at countering the misuse of administrative resources – targeting public servants – has been introduced in Georgia.

The division also contributes to raising awareness of the importance of participating in elections as voters and candidates. It assists national election administrations in developing voter education and information campaigns, with a special focus on women, first-time voters and persons belonging to national minorities (such as awareness-raising campaigns for first-time voters in Albania).

In addition, technical assistance work has been carried out aiming to update the Council of Europe Recommendation Rec(2004)11 of the Committee of Ministers on legal, operational and technical standards for e-voting. On 14 June 2017 the Committee of Ministers adopted Recommendation CM/Rec(2017)5, which was developed to ensure that electronic voting complies with the principles of democratic elections, and is the only international standard on e-voting in existence to date. The division is supporting further digital solutions in electoral processes to enhance integrity and public confidence in elections.

The Council of Europe Electoral Laboratory (ElecLab) concentrates on the division's research and thematic work in order to innovate and produce useful and relevant guidelines in various areas of electoral matters, ranging from first-time voters to better representation of women to modern strategic planning. Since 2019 the division has based its assistance and support activities on URSO methodology for electoral co-operation – Useful, Relevant, Sustainable and Owned. The "URSO toolkit for strategic and co-operation planning" is available online. Its primary audience is national electoral stakeholders who are engaged in electoral reforms, in particular, central electoral commissions.

Foreword

*Giorgi Kalandarishvili,
Chairperson of the Central Election Commission of Georgia*

On behalf of the Election Administration of Georgia, I would like to welcome another important initiative of the Council of Europe – to develop a toolkit aimed at combating hate speech in electoral processes. This is a very timely and necessary intervention, and I am convinced that the toolkit will be an effective instrument to overcome the challenges related to the use of hate speech in elections.

Hate speech is a serious problem for the election administration, for all parties involved in elections, and most of all for society as a whole. Therefore, the election administration, working within its competences, is sparing no effort and will continue to fight against hate speech and the harmful consequences of its use.

It is important to note that the election administration in Georgia already has solid experience in this field. The Central Election Commission and its Centre for Electoral Systems Development, Reforms and Training, in co-operation with the Council of Europe electoral support project, developed a training module, Combating Hate Speech in Electoral Processes. The training course is included in all educational programmes of the election administration and its Training Centre and is constantly available to all interested groups – political parties, NGOs and media representatives. As the training course proved to be effective and well received by the participants, it was decided to include it in a broader project implemented by the election administration. The informational training course Elections and Young Voters is being delivered to students in 300 public schools, with a thematic block entitled The Importance of an Electoral Environment Free of Hate Speech for Democratic Elections.

Meanwhile, together with the successful implementation of the training course, practice and discussions have revealed new needs – to enhance efforts and develop common approaches. To that end, we appreciate how the Council of Europe has responded to these emerging needs in a timely manner and by working on these methodological guidelines.

The toolkit, which you now have the opportunity to explore, will definitely have a strong impact on combating hate speech in practice and will support our country's efforts to improve democratisation.

There is no place for hate speech in a democratic society and, in particular, in electoral processes!

Preface

*Franck Daeschler,
Deputy Head of Elections and Participatory Democracy Division, Council of Europe*

Freedom of expression is a fundamental component of any democratic society. In practice, anyone should be able to express views and opinions about any given topic. This freedom is even more crucial during electoral campaigns which, in the democratic cycle, are the periods when the ability to debate any political or other public issue is essential for the voters, who need to be able to critically assess the policies and programmes of the political parties and/or candidates competing, to make an informed decision in a democratic election.

However, any freedom of expression and debate must be respectful and civilised, therefore free of any hate or inflammatory speech, which are unacceptable violence, often accompanied by disinformation and incitement to others to commit further violence, aiming at preventing candidates from campaigning freely while distorting and disturbing the debate, confusing the electorate, creating instability and possibly unrest, and thereby threatening democratic society.

The Council of Europe protects and promotes the values of human rights, democracy and the rule of law. Among those priorities, combating hate speech is deemed to be crucial to foster democratisation processes in the Council of Europe member states. Through its unique monitoring bodies, the Council of Europe ensures implementation of its policy and legal instruments aimed at tackling hate speech and incitement to hatred. The most comprehensive document on combating hate speech is provided by the dedicated Council of Europe body, the European Commission against Racism and Intolerance (ECRI), which defines it thus:

hate speech entails the use of one or more particular forms of expression – namely, the advocacy, promotion or incitement of the denigration, hatred or vilification of a person or group of persons, as well any harassment, insult, negative stereotyping, stigmatisation or threat of such person or persons and any justification of all these forms of expression – that is based on a non-exhaustive list of personal characteristics or status that includes “race”, colour, language, religion or belief, nationality or national or ethnic origin, as well as descent, age, disability, sex, gender, gender identity and sexual orientation. (ECRI, Recommendation No. 15 on combating hate speech, 2015: 16)

Combating hate speech, and the incitement of hatred, is gaining particular importance during electoral processes today because of the challenges of the digital era and the impact of social platforms on the free expression of the will of the voters. Electoral campaigns are more often characterised by instances of hate speech, damaging the electoral environment and becoming an obstacle to the informed choice of citizens.

As recent electoral cycles have shown, democratisation and electoral processes in Georgia have also proved to be vulnerable to hate speech and its negative impact on the electoral environment and the confidence of citizens in elections.

The Council of Europe electoral support project – Supporting Transparency, Inclusiveness and Integrity of Electoral Practice and Process in Georgia – co-operates with domestic electoral stakeholders to prevent and tackle the use of hate speech in electoral processes.

To that end, the project – in co-operation with the Central Election Commission of Georgia (hereinafter CEC) and its Centre for Electoral Systems Development, Reform and Training (hereinafter Training Centre) – designed and introduced a study course on Combating Hate Speech in Electoral Processes for election management bodies. This course, among other topics, covers the following: applicable international standards and instruments for countering hate speech and incitement of hatred during electoral processes, strategies for election management bodies to prevent and respond to instances of hateful speech effectively, hate speech and disinformation, hate speech and sexism.

At the time of writing, this course is integrated and implemented in all educational programmes of the Election Administration of Georgia and is targeting not only election officials but also a broad range of electoral stakeholders.

The implementation of the course showed that there was a lack of methodological guidelines in this field, as well as a compilation in the Georgian language of Council of Europe policy, legal instruments and analysis of international good practice.

Thus this toolkit was developed in close co-operation with the CEC and with the support and engagement of the Council of Europe's international and local experts. It will serve as a methodological guide for election management bodies and electoral stakeholders, as well as a road map on the way to effectively combat hate speech and incitement to hatred in electoral processes and it will contribute to the development of a healthy and competitive electoral environment. This toolkit offers a comprehensive analysis of the Council of Europe standards and good practices of member states in this field, as well as a deep analysis of the domestic legal framework and practice. It also includes a training module and suggests strategies and practical tools aimed at tackling hate speech in elections. It could also be considered as an additional comprehensive resource for participants of the above-mentioned study course.

Hate speech and electoral campaigns

International standards and good practices

*Yves-Marie Doublet,
Deputy director of the financial department of the National Assembly (France),
Council of Europe Expert*

1.1. Introduction

Political debate requires civility in discussion and integrity in political processes. Speech during electoral campaigns by nature is tumultuous and provocative; it does not leave space for moderation and on the contrary prefers overstatement. Hate speech has always existed because it is part of political debate. But between overstatement and hate speech there is a difference of degree. And over the past few years, the impact of hate speech has become more widespread and with the internet it carries the insidious ability to distort, to mislead, to produce instability and to threaten democracy.

Definitions of hate speech are sometimes mixed up with disinformation and cyberattacks. It includes the pursuit of various offences against the person and other criminal or invasive behaviour as well as the dissemination of propaganda, conspiracy theories and spam, used to attract inadvertent users and for trolling and other disruptive practices (McGonagle 2013). Hate speech, like cyberattacks and disinformation, has an impact on the democratic electoral process. The purpose of hate speech, cyberattacks and disinformation is the same. It is the destabilisation of democracy through smear campaigns to weaken candidates, parties or ruling governments with the use of discrediting tactics. But these three practices have to be distinguished. Hate speech and disinformation are used both offline (alongside the traditional ways of campaigning) and online, while cyberattacks are used exclusively online. For these reasons, the notions of hate speech, cyberattacks and disinformation have to be clarified in relation to each other.

If we refer to the Oxford Dictionary, hate speech designates “abusive or threatening speech or writing that expresses prejudice on the basis of ethnicity, religion, sexual orientation or similar grounds”. The appendix to Recommendation No. R (97) 20 of the Council of Europe Committee of Ministers on “hate speech” defines it as “speech likely to produce the effect of legitimising, spreading or promoting racial hatred, xenophobia, anti-Semitism or other forms of discrimination or hatred based on intolerance. Such statements should be prohibited and publicly disavowed whenever they occur”.

The European Commission against Racism and Intolerance of the Council of Europe (ECRI) provides a broader definition of hate speech. It is understood as the advocacy, promotion or incitement in any form of the denigration, hatred or vilification of a person or a group of persons, as well as any harassment, insult, negative stereotyping, stigmatisation or threat in respect of such a person or group of persons and the justification of all the preceding types of expression, on the ground of race, colour, descent, national or ethnic origin, age, disability, language, religion or belief, sex gender, gender identity, sexual orientation and other personal characteristics or status. Hate speech produces negative emotional reactions against the group which is targeted and, as the ECRI noted, the use of hate speech may be intended to incite, or reasonably expected to have the effect of inciting others to commit, acts of violence, intimidation, hostility or discrimination against those who are targeted. Anyone who delivers extremist speech plays not only with words but generates a climate of violence.¹ A disinhibited discourse feeds extremism. When hate speech campaigns are used against candidates or political parties, they will be obliged to defend themselves full-time and to sacrifice the presentation of their programme. So it weakens them in the electoral competition. Any form of intimidation, which can include abusive communication but also physical violence, is intended in certain cases to cause an individual

1. Die unheimliche Macht des Wortes, *Frankfurter Allgemeine Zeitung*, 21 September 2021, p. 6.

to withdraw from a public space as a candidate or as an elected person (UK Committee on Standards: 26) and to exclude certain persons from the democratic debate.² For instance, there were around 70 cases of criminal damage to the constituency offices of French MPs in 2019-2020.

The reports of the ECRI provide numerous examples of prejudicial hate speech around the member states.³ Examples from Germany, Spain and the United Kingdom illustrate the different forms of this negative discourse in politics, which aims at incitement to hatred and to vilification.

In the context of the arrival of very significant streams of asylum seekers in Germany, it has been pointed out that most of the hate speech was directed against the migrants and that hate speech was much more retweeted than any true story. According to the same study, the proportion of hate speech on the Facebook pages of the German political parties amounted to 4.33%.⁴ Lists of political enemies to target with hate speech have been elaborated by extreme parties. Germany was not spared either attempted or actual murders of politicians, if we refer to the knife attack on the mayor of Cologne in 2015 and to the murder of a Christian Democrat prefect in 2019.

The populations targeted in Italy in the 2018 electoral campaign were again the migrants (91% of the targets).⁵ A Spanish study referring to hate speech on Instagram during the 2019 General Election distinguishes the different forms of hate speech that were recorded during this electoral campaign:⁶ criticism amounted to 36.59% of the messages; insults 29.33%; expressions of contempt 8.81%; threats 0.7%; teasing or taunting 19.48%; and others 5.63%.

In the United Kingdom, special attention has been paid to hate speech following the Brexit campaign and the murder of members of Parliament in 2016 and 2021. In 2017, the Committee on Standards in Public Life stated: "The scale and the intensity of intimidation is now shaping public life. This is a matter of serious concern". At the 2019 General Election, the Electoral Commission received feedback from 750 candidates. Three quarters had experienced some abuse, threats or intimidation and a sixth said they experienced significant levels. Some candidates felt there was co-ordinated abuse and intimidation of other parties and causes.⁷

1.1.1. Cyberattacks

Cyberattacks against public institutions such as parliaments, political parties or websites of elected people or candidates have spread frequently too. Sometimes they target personal data theft. The initiatives of the states depend mostly on preventive and reactive actions, which for obvious reasons are not made public. Foreign phishing attacks on members of the German Parliament, designated "Ghostwriter" actions, justified investigations by the German public prosecutor.⁸

The response to cyberattacks is international too, but responses to cyberattacks are in practice in the hands of the individual states because international initiatives in that field are in limbo. The Council of the European Union (EU) adopted on 17 May 2019 a regulation on restrictive measures against cyberattacks threatening the European Union or its member states.⁹ Among the different threats mentioned are cyberattacks on the functioning of institutions, including those for public elections or the voting process.

A co-operation group, comprising the national competent authorities responsible for cybersecurity, the European Commission and the EU Agency for Network and Information Security (ENISA), has mapped national initiatives of network and information systems used for elections for the European election process.¹⁰ A regulation setting up the Cybersecurity Competence Centre and the Network of National Co-ordination Centres was adopted on 20 May 2021. It pools resources from the EU member states and industry to improve and

2. For a study mostly focused on developing and emerging countries, see: *Countering hate speech in elections: strategies for electoral management bodies*, IFES 2018. For a study concentrating on the freedom of the media, see: www.osce.org/representative-on-freedom-of-media/424451.

3. Country reports 2020 on Austria, the Czech Republic, Slovakia, Switzerland and 2021 on Norway.

4. Markus Behmer, Hasskommentare auf den Face-book Seiten deutscher Parteien, Otto Friedrich Universität Bamberg, 13.04.2020.

5. Amnesty International, Conta Fino A 10, Barometro dell'odio in campagna elettorale, available at <https://d21zrvtkxtd6ae.cloudfront.net/public/uploads/2018/02/16105254/report-barometro-odio.pdf>.

6. JC Losada-Diaz, R. Zamora-Medina, H. Martinez-Martinez, El discurso del odio en Instagram durante las Elecciones Generales 2019 en Espana, *Revista Mediterranea de Comunicacion*, 22.02.2021.

7. Elections Bill 2021-22, House of Commons Library, 1 September 2021, p. 57.

8. See www.tagesschau.de/ausland/cyberangriffe-russland-gru-ghostwriter-101.html; Auf der Jagd nach sensiblen Informationen, *Frankfurter allgemeine Zeitung*, 7 October 2021.

9. See <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R0796>.

10. Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Securing free and fair European elections, 12 September 2018.

strengthen technological and industrial cybersecurity capacities, enhancing the EU's open strategic autonomy and offering the possibility of consolidating part of the cybersecurity-related activities funded under Horizon Europe, the Digital Europe Programme and the Recovery and Resilience Facility. As the EU's foreign policy chief said on 24 September 2021, the protection of cyberspace needs advanced research, training and exercises along with increased efforts to prevent, deter and respond to cyberattacks against computerised systems and software applications linked with politics.

1.1.2. Disinformation

Disinformation is a deliberate attempt to make people believe things which are not accurate. It involves fabricated information blended with facts and specific practices that go well beyond any resemblance to news to include automated accounts used for networks of fake followers, manipulated videos or targeted advertising (Independent High Level Expert Group 2018).

If we focus our attention on hate speech and disinformation, both practices may come together when disinformation is based on discrimination and polarises the political debate. In this context, hate speech becomes a strategy to break the social consensus.¹¹ The speed of the messages, which can go viral and reach a vast audience, and their low investment cost¹² are common to hate speech and disinformation. Hate speech as disinformation applies directly or indirectly to individuals or groups of persons, and especially to gullible and vulnerable persons.

Both forms of electoral campaigning are misleading, manipulative, offensive and defamatory. Both look like public trials but without any adversarial procedure. Hate speech mostly relies on discrimination, while disinformation is based on lies, but these lies may be rooted in discrimination, which brings the evidence of the interconnections between disinformation and hate speech. In some cases, it will be difficult to make a distinction between hate speech and disinformation, when a candidate is slandered by attacks. The same message may contain both fake news and hate speech.

However, the strategies and the techniques used, the context, the scope and the targeted persons may be different when we distinguish between disinformation and hate speech.¹³ Classic ways of campaigning such as manifesto material, pamphlets, media, advertising, oral statements in the public debate, rallies and canvassing may be used for hate speech as well as online platforms, while disinformation mostly relies now on online platforms. International standards address hate speech much more than disinformation too because hate speech is related to discrimination, which has been combated by conventions, treaties and recommendations for decades, while the regulations on disinformation, like those against cyberattacks, are still an uncharted map at international level.

Regarding defamation, the difference between these two expressions of speech may be regarded as slight. Defamation will be understood as any allegation or charge which damages the honour or the reputation of a person. An insult will be regarded as any offensive expression of contempt which does not contain any reference to any fact.¹⁴ For that purpose, disqualifying metaphors analogies will be used as a way to avoid any in-depth debate on programmes and contradiction. However, in certain cases the judge may qualify a defamation as hate speech if it is not related to precise facts.

1.1.3. Questions we need to ask

What should be qualified as illegal hate speech? How should hate speech be considered as one of the ways of conducting electoral campaigns? What is the common approach to this issue by international standards? Are national initiatives to tackle offline and online hate speech sufficient? How do they comply with the right to freedom of expression? Is there any scope for restrictions on political speech during electoral campaigns? Would restrictions during electoral campaigns lead to censorship? Who are the different stakeholders responsible for using hate speech during electoral campaigns? How should political parties and third parties be included among these stakeholders? Is there any risk of government abuse in limiting freedom of expression? How is foreign interference in hate speech regulated? Can the foreign source of hate speech be detected? How is the

11. Diskussionsräume und Radikalisierungsprozesse in sozialen Medien, Bundeszentrale für politische Bildung, 9 May 2019.

12. Yves-Marie Doublet, *Disinformation and electoral campaigns*, Directorate General of Democracy, Council of Europe 2019. Desinformation und Wahlkampf, Institut für Parteienrecht, MIP 2021. 27 Jhrg. Heft 2, <https://mip.pruf.hhu.de/index>.

13. Deutscher Bundestag, *Meinungsfreiheit in sozialen Medien*, WD-3000-021/21, available at www.bundestag.de/resource/blob/844922/242d8fb9fd1b6ff73170d6670e9fa634/WD-10-021-21-pdf-data.pdf.

14. Article 29 of the French Act of 29 July 1881 on the freedom of the press.

removal of websites for online illegal hate speech outside national borders possible? What are the tools to foster an environment favourable to tolerance in politics? Beside self-regulation of the operators, what are the legal ways to respond to hate speech during an electoral campaign? What kind of sanctions may be imposed against physical and legal persons who make statements in electoral campaigns that incite others to violence and hatred? What are the different ways used by states against cyberattacks?

To answer these questions, hate speech has to be analysed with regard to existing international standards, to the jurisprudence of the European Convention on Human Rights and to some experience and regulations from member states of the Council of Europe and beyond.

1.2. International standards

As regulations on electoral campaigns fall within the competence of national legislations, there are no real international standards on electoral campaigns. International standards focus on freedom of expression. One of the few international documents that deals with elections is the Concluding Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE (the Organization for Security and Co-operation in Europe) of 29 June 1990 (point 5.1).

1.2.1. The treaties and conventions

Article 1 of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in 1948 states that “All human beings are born free and equal in dignity and rights”. Article 2 provides for an equal enjoyment

without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

The international Convention on the Elimination of All Forms of Racial Discrimination adopted by the General Assembly of the United Nations of 21 December 1965 distinguishes four kinds of hate speech: hate speech related to dissemination of a discourse based on racial superiority, racial hatred, incitement to racial discrimination and the provision of any assistance to racist activities, including the financing thereof.

The International Covenant on Civil and Political Rights of 16 December 1966 grants the right for everyone to “hold opinions without interference”. Everyone shall have the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of their choice. But Article 19 says that free speech may be subject to certain restrictions: “a) for respect of the rights or reputations of others and b) for the protection of national security or of public order or of public health or morals”. Article 20 adds that states shall prohibit by law “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”.

Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women of 18 December 1979 “condemns discrimination against women in all its forms”. The Convention on Rights of Persons with Disabilities (adopted 13 December 2006) places a duty upon states to eliminate discrimination based on disability.

At European level, Article 7 of the European Convention on Transfrontier Television (adopted 1 May 1993 and ratified by 33 states) requires programme services to respect the dignity of the human being and in particular not to give undue prominence to violence or be likely to incite to racial hatred. The same article provides that the broadcaster shall ensure that news bulletins fairly present facts and events and encourage the free formation of opinions.

The Council of Europe Convention on Cybercrime (23 November 2001, ratified by 45 member states) was the first international treaty on crimes committed via the internet and other networks. It calls on each signatory to adopt legislative and other measures to establish as criminal offences actions against the confidentiality, integrity and availability of computer data and systems. In the additional protocol to this convention (28 January 2003, ratified by 30 member states) each signatory shall adopt legislative and other measures to establish as criminal offences the use of computer systems to disseminate racist and xenophobic material or to make racist and xenophobically motivated threats and insults and to deny, grossly minimise, approve or justify genocide or crimes against humanity.

Two provisions of the Council of Europe Convention on Preventing Violence Against Women and Domestic Violence (11 May 2011, ratified by 35 member states) deserve attention. According to its Article 34, parties shall take the necessary legislative or other measures to ensure that the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, is criminalised. Pursuant to Article 40, parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular, when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction.

1.2.2. The resolutions of the Parliamentary Assembly of the Council of Europe

The Council of Europe's Parliamentary Assembly and its Committee of Ministers have been meaningfully committed to the protection of free expression and to the guarantee of free elections.

In Resolution 2144 (2017) on ending cyber-discrimination and online hate (25 January 2017), the Assembly recalls that "it is crucial therefore that strategies to eliminate hate in the online environment acknowledge and tackle hatred and intolerance in people's hearts and minds". It encourages member states to work on a common definition of hate speech and on a national legal framework for effective prosecution of online speech in compliance with freedom of expression.

In Resolution 2254 (2019) on media freedom as a condition for democratic elections (23 January 2019), the Assembly considers that the member states should implement effective strategies to protect the electoral process and democracy from the threat of information manipulation and undue propaganda through social media. (For the British definition of undue influence, see p. 34.) For that reason member states should, *inter alia*:

- ▶ refrain from disseminating or encouraging the dissemination on the internet of statements, communications or news which they know or can reasonably be expected to know to be disinformation or undue propaganda;
- ▶ develop specific regulatory frameworks for internet content at election times and include in these framework provisions on transparency;
- ▶ ensure that sanctions provided for in relation to unlawful content are not diverted to force self-censorship of opponent's opinions and critical views.

Resolution 2255 (2019) on public service media in the context of disinformation and propaganda (23 January 2019) recommends that member states should avoid the term "fake news", which has been excessively politicised and frequently used to negatively label independent critical journalists or media outlets. They should use the concept of "information disorder" to describe the content, the purpose and the extent of dissemination of misleading information.

Resolution 2275 (2019) on the role and responsibilities of political leaders in combating hate speech and intolerance (10 April 2019) stresses how hate speech and intolerance have become part of political discourse. Media should not give excessive visibility to instances of stigmatising or abusive language. Political movements and parties should be encouraged to adopt self-regulation instruments such as codes of conduct and ethical charters that prohibit and penalise the use of hate speech by their members. At the same time, media should be encouraged to provide accurate, unbiased and responsible information in matters relevant to individuals or groups.

In Recommendation 1805 (2007) on blasphemy, religious insults and hate speech against persons on grounds of their religion, the Assembly recommended the Committee of Ministers to ensure that national law and practice:

- ▶ permit open debate on matters relating to religion and beliefs and do not privilege a particular religion in this respect, which would be incompatible with Articles 10 and 14 of the Convention;
- ▶ penalise statements that call for a person or a group of persons to be subjected to hatred, discrimination or violence on grounds of their religion as on any other grounds;
- ▶ prohibit acts which intentionally and severely disturb the public order and call for public violence by references to religious matters, as far as it is necessary in a democratic society.

In a Resolution 2390 (2021),¹⁵ the Parliamentary Assembly expressed its concern at the combination of financial interference in a country's democratic decision-making process with other tools of interference, such as disinformation and cyberattacks. The Assembly called on the parliaments of member states to organise hearings on the issue of financial contributions to political parties and electoral campaigns from foreign sources and

15. Resolution 2390 (2021) of 24 June 2021 is available at <https://pace.coe.int/en/files/29373#trace-4>.

on their potential to influence democratic decision-making processes in their political systems, including the correlation with other forms of interference such as disinformation and cyberattacks.

1.2.3. The recommendations of the Committee of Ministers of the Council of Europe

After stating their grave concern about the resurgence of many forms of discrimination, the ministers' recommendation to the member states on hate speech of 30 October 1997 invites them to establish or maintain a sound legal framework consisting of civil, criminal and administrative law provisions on hate speech that will enable administrative and judicial authorities to reconcile in each case respect for freedom of expression with respect for human dignity and the protection of the reputation or the rights of others. The same text defines hate speech as "speech likely to produce the effect of legitimising, spreading or promoting racial hatred, xenophobia, anti-Semitism or other forms of discrimination or hatred based on intolerance. Such statements should be prohibited and publicly disavowed whenever they occur" (No. R (97) 20: Appendix, Principle 2). A review of this text to match updated technology is pending.¹⁶

Recommendation No. R (97) 21 of 30 October 1997 is dedicated to the media and the promotion of tolerance.

Stressing the increase of forms of harassment, hatred and incitements to violence on the basis of gender, race and religion via the internet, Recommendation Rec(2018)2 on the roles and responsibilities of internet intermediaries calls on member states to ensure that illegal content should be effectively prevented from being accessed and to co-operate closely with intermediaries to secure the restriction of such content, in line with the principles of legality, necessity and proportionality.

1.2.4. The European Commission against Racism and Intolerance of the Council of Europe

The most comprehensive document on combating hate speech is provided by ECRI General Policy Recommendation No. 15, adopted on 8 December 2015,¹⁷ which says that hate speech is based on the unjustified assumption that a person or a group of persons is superior to others; it incites acts of violence or discrimination, thus undermining respect for minority groups and damaging social cohesion. In this recommendation, ECRI calls for speedy reactions by public figures to hate speech; promotion of self-regulation of media; raising awareness of the dangerous consequences of hate speech; withdrawing financial and other support from political parties that actively use hate speech; and criminalising its most extreme manifestations, while respecting freedom of expression. Anti-hate speech measures must be well-founded, proportionate and non-discriminatory, and not be misused to curb freedom of expression or assembly nor to suppress criticism of official policies, political opposition and religious beliefs.

1.2.5. The initiatives of the European Union

Article 10 of the Charter of Fundamental Rights of the EU enshrines freedom of thought, conscience and religion, and Article 11 grants freedom of expression and information.

To prevent and counter the spread of illegal hate speech online, in May 2016, the European Commission agreed with Facebook, Microsoft, Twitter and YouTube a "Code of conduct on countering illegal hate speech online". In the course of 2018, Instagram, Snapchat and Dailymotion accepted the Code of Conduct, joined by Jeuxvideo.com in January 2019 and TikTok in September 2020, followed on 25 June 2021 by LinkedIn. The sixth evaluation on the Code of Conduct shows that while the average of notifications reviewed within 24 hours remains high (81%), it has decreased over time.

- ▶ 90% of flagged content was assessed by the platforms within 24 hours, whereas it was only 40% of content in 2016.
- ▶ 71% of the content deemed to be illegal hate speech was removed in 2020, whereas only 28% of such content was removed in 2016.
- ▶ The average removal rate, similar to the one recorded in previous evaluations, shows that platforms continue to respect freedom of expression and avoid removing content that may not qualify as illegal hate speech.
- ▶ Platforms responded and gave feedback to 67.1% of the notifications received.

16. Committee of Experts on Combating Hate Speech (ADI /MSI-DSI), 25 May 2020.

17. See www.coe.int/en/web/european-commission-against-racism-and-intolerance/recommendation-no.15.

The proposal for a regulation on a Single Market For Digital Services (Digital Services Act)¹⁸ of 15 December 2020 introduces a horizontal framework for all categories of content, products, services and activities on intermediary services to improve users' safety online across the EU. For that purpose, it defines responsibilities and accountability for providers of intermediary services, in particular, online platforms. In order to achieve the objective of ensuring a safe, predictable and trusted online environment, for the purpose of this regulation the concept of "illegal content" is defined broadly and also covers information relating to illegal content, products, services and activities. In particular, that concept should be understood to refer to information, irrespective of its form, that under the applicable law is itself illegal, such as illegal hate speech. The resolution also includes clear reporting and transparency responsibilities for platforms and authorities. It sets out due-diligence obligations for certain intermediary services, including notice-and-action procedures for illegal content and the possibility of challenging the platforms' content-moderation decisions.

1.2.6. Other initiatives

1.2.6.1. Charters and guides

The Charter of European Political Parties for a Non-Racist Society (version of 29 March 2017) invites political parties "to refuse to display, to publish or to have published, to distribute or to endorse in any way views and positions which stir up or invite, or may reasonable be expected to stir up or to invite prejudices, hostility or division between people of different ethnic or national origins or religious beliefs, and to deal firmly with any racist sentiments and behaviour within its own ranks".¹⁹

The "Guide to good and promising practices on the way of reconciling freedom of expression with other rights and freedoms", in particular in culturally diverse societies, adopted in June 2019 by the Steering Committee for Human Rights of the Council of Europe lists the national strategies, legislations and prosecutions of hate speech offences as well as the self-regulation by public and private institutions on these matters.²⁰

1.2.6.2. Parliamentary Codes of Ethics

A report by Article 19 on responding to hate speech in Hungary recalls that "All public officials, including politicians, have a key role to play in recognising and promptly speaking out against intolerance and discrimination, including instances of hate speech"²¹ and proposes some changes in Hungarian law in accordance with international standards. One recipe to prevent hate speech is to foster a culture of tolerance inside political institutions such as parliaments, which obliges MPs to maintain proper conduct in political debate and in electoral campaigns.

The Code of Ethics for members of the Greek Parliament provides for the prevention of hate speech against persons on the grounds of their racial or ethnic origin, religious or political beliefs, sex, age, disability or sexual orientation.²² An MP used this provision in September 2021 and requested a referral to the Parliamentary Ethics Committee because a colleague posted on a website an article which displayed the personal data of a particularly sensitive age group and targeted infants who were not of Greek origin. The Code of Ethics of the Latvian Parliament has similar provisions.

A Member of Parliament avoids using words, gestures and other actions that can be insulting and does not use offensive or otherwise inappropriate statements that may dishonour the Saeima. A Member of Parliament bases his/her decisions on facts and their fair interpretation, as well as on logical argumentation. A Member of Parliament does not use statements and does not support actions that may be regarded as incitement to illegal activity. A Member of Parliament observes the principles of human rights and does not appeal to race, gender, skin colour, nationality, language, religious beliefs, social origin or state of health to justify his/her argumentation.²³

In the Czech Republic, the Constitutional Court decided on 16 June 2015 that immunity could not be invoked by a member of Parliament who made anti-Roma statements on Facebook because these statements were not part of the parliamentary debate: "Posting any text on the social network Facebook does not have the attributes of a speech of a Member of Parliament in the Parliament".²⁴ The Constitutional Court agreed with the

18. See <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020PC0825&from=en>.

19. See <https://rm.coe.int/charter-european-political-parties-non-racist-society/16809022ba>.

20. See <https://rm.coe.int/guide-to-good-and-promising-practices-on-the-way-of-reconciling-freedom-of-expression-with-other-rights-and-freedoms/1680969acf>.

21. Available at www.article19.org/wp-content/uploads/2018/03/Hungary_responding_to_HS.pdf, p. 47.

22. Article 2 and 8, section 1, Official Gazette A 67 / 18.04.2016.

23. Available at www.saeima.lv/en/legislative-process/rules-of-procedure.

24. At www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Decisions/pdf/1-3018-14.pdf.

Supreme Court that the publicly accessible user profile on a social network, as on other generally accessible websites, had the character of a mass communication medium and was thus equivalent to any presentation in a TV political debate, at a party congress or in the press and is not protected by immunity.

1.3. Constitutions

Article 5 of the German Basic Law states that “Every person shall have the right freely to express and disseminate his opinions in speech, writing and pictures and to inform himself without hindrance from generally accessible sources”. This right finds its limit in the right to personal honour.

The restriction of political parties which promote hatred, intolerance and xenophobia is part of the debate on hate speech in Germany. In a decision of 17 January 2017, the Federal Constitutional Court had to decide if the prohibition of a political party which was hostile to democracy was possible. It stated that the fact that a political party is seeking to abolish or undermine the free democratic basic order must be clear from its aims or from the behaviour of its adherents. Activities of a political party’s organs, specifically the party’s executive committee and its leading functionaries can generally be attributed to the political party if they are undertaken in a political context and the political party has approved or condoned them. In the case of adherents who are not members of the political party, the influence or approval, in whatever form, of their behaviour by the political party is generally a necessary condition for attributing such behaviour to the party. There can be no blanket attribution of criminal offences and acts of violence if there is no specific link for such an attribution. In order to prohibit a political party, it is not sufficient that its aims are directed against the free democratic basic order. Instead, the party must “seek” to undermine or abolish the free democratic basic order. It requires systematic action of the political party that amounts to a qualified preparation for undermining or abolishing the free democratic basic order or that aims at endangering the existence of the Federal Republic of Germany. For these reasons the application for the prohibition of the political party was declared unfounded.²⁵

Article 21 of the Basic Law was amended on 20 July 2017 to exclude from state funding any political parties which may be a threat to the democratic basic order.

Parties that, by reason of their aims or the behaviour of their adherents, are oriented towards an undermining or abolition of the free democratic basic order or an endangerment of the existence of the Federal Republic of Germany shall be excluded from state financing. If such exclusion is determined, any favourable fiscal treatment of these parties and of payments made to those parties shall cease.

The Constitutional Court would rule on the question of unconstitutionality and on the exclusion from state financing. This exclusion could last six years (Article 46a Bundesverfassungsgerichtsgesetz).

According to Article 21 of the Italian Constitution, “Anyone has the right to freely express their thoughts in speech, writing, or any other form of communication”.

Paragraph 1 of Article 54 of the Constitution of Poland guarantees to everyone the freedom to express opinions, and to acquire and to disseminate information. The right to freely express and disseminate thoughts, ideas and opinions is provided by Article 20, 1, a) of the Spanish Constitution.

But these provisions extracted from a sample of constitutions cannot be considered as isolated regulations and have to be in line with the rules and jurisprudence on the right to expression during electoral campaigns in the light of the jurisprudence of the European Convention on Human Rights.

1.4. The jurisprudence of the European Court of Human Rights

Expression in electoral campaigns cannot be tackled by ignoring the jurisprudence of the European Court of Human Rights (the Court) on freedom of expression. For that reason, the jurisprudence of the Court has to be analysed in the light of two types of freedom: the freedom of expression and the freedom of electoral campaigns.

Article 10 of the European Convention on Human Rights says:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

²⁵. See www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2017/01/bs20170117_2bvb000113en.html.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 10 implies that states are required to create a favourable environment for participation in public debate by all persons concerned, enabling them to express their opinions and ideas without fear.²⁶ According to Article 3 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms – Right to free elections:

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

These two freedoms form the bedrock of any democratic system.²⁷ One of the principal characteristics of democracy is the possibility it offers of resolving a country's problems through dialogue without recourse to violence, even when the problems are irksome. Democracy thrives on freedom of expression. It is of the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way a state is currently organised, provided that they do not harm democracy itself.²⁸ As said in the decision *Orlovskaya Iskra v. Russia*, the two rights – freedom of expression and freedom of electoral campaigns – are interrelated and operate to reinforce each other. Freedom of expression is one of the two “conditions” necessary to ensure the free expression of the opinion of the people in the choice of the parliament. For this reason, it is particularly important in the period preceding an election that opinions and information of all kinds be permitted to circulate freely.

1.4.1. The primacy of freedom of expression

Given the significance of freedom of expression in a democratic society, the balance is weighted in favour of this freedom.²⁹

Freedom of expression is the core of a democratic society, which is the cornerstone of the European Convention on Human Rights.³⁰ Freedom of expression constitutes one of the essential foundations of such a society, as well as one of the basic conditions for its progress and for the development of every person.³¹ It grants the effective exercise of others' freedoms.

The European Court of Human Rights emphasises that the promotion of free political debate is a very important feature of a democratic society. The Court attaches the highest importance to freedom of expression in the context of political debate and considers that very strong reasons are required to justify restrictions on political speech. The concept of “protection of rights of others” as a legitimate aim for the restriction provided by Article 10.2 of the European Convention on Human Rights applies to instances of political expression inciting to discrimination or violence or containing offensive opinions against an individual or a group.³² Allowing broad restrictions on political speech in individual cases would undoubtedly affect respect for the freedom of expression in general in the state concerned; and even if certain restrictions, which have to be very strong,³³ are admitted, it is for the Court to give a final ruling on the compliance of such restrictions with the freedom of expression granted by the Convention. More generally the protection of the democratic process has been considered necessary in order to ensure an effective political democracy and thus has fallen under the concept of the “protection of rights of others” according to Article 10.2.³⁴ As the promotion of the right to freedom of expression is an obligation for member states, the right to reply to defamation in the press is guaranteed in a democratic society.³⁵

26. See *Dink v. Turkey*, Application Nos. 2668/07, 6102/08, 30079/08, 7072/09, 7124/09, section 137, 14 September 2010.

27. *Orlovskaya Iskra v. Russia*, Application No. 42911/08, section 110, 21 February 2017.

28. *Manole and Others v. Moldova*, Application No. 13936/02, sections 95-99, 17 December 2009.

29. Jean-Marc Sauvé, “La liberté d'expression à l'âge d'Internet”, Conseil d'État, 28 April 2017, available at www.conseil-etat.fr/actualites/discours-et-interventions/la-liberte-d-expression-a-l-age-d-internet.

30. *Almeida Azevedo v. Portugal*, Application No. 43924/02, section 30, 23 January 2007.

31. *Handyside v. the United Kingdom*, Application No. 5493/72, section 49, 7 December 1976.

32. *Féret v. Belgium*, Application No. 15615/07, section 59, 10 December 2009; *Willem v. France*, Application No. 10883/05, section 29, 10 December 2009.

33. *Feldek v. Slovakia*, Application No. 29032/95, section 83, 12 October 2001.

34. *Ahmed and Others v. the United Kingdom*, Application No. 22954/93, sections 52-54, 2 September 1998.

35. *Eker v. Turkey*, Application No. 24016/05, section 48, 24 January 2018.

Different aspects of freedom of expression are taken into account by the jurisprudence. For example, freedom of expression includes access to information.³⁶

The anonymity of the tools available makes it far easier to express oneself online without revealing one's identity than it would be offline. Anonymity emboldens users to be abusive, but this anonymity cannot operate as an absolute protection against unlawful conduct.

The impact of the internet is even more important than that of the press. The ease, scope and speed of dissemination of information on the internet and the persistence of the information once disclosed may considerably aggravate the effects of unlawful speech on the internet compared to traditional media:³⁷ "The risk of harm posed by content and communications on the internet to the human rights and freedom is certainly higher than that posed by the press."³⁸ In the case law under Article 10, the Court has taken the view that, due to its accessibility and its capacity for storage, the internet plays an important role in enhancing the public's access to news and disseminating information.³⁹ An increasing amount of information is available on the internet.⁴⁰ It has also been used for political statements.⁴¹ The Court considered that a political message of a discriminatory nature, first delivered orally and then published in a newspaper outlet, was exacerbated by its publication on the internet.⁴² The benefits of the internet are accompanied by a number of dangers in that clearly unlawful speech, including defamatory remarks, hate speech and speech inciting violence, can be disseminated as never before, worldwide, in a matter of seconds and sometimes remain persistently available online.⁴³

It is obvious too that social media have given a voice to social groups, and vulnerable groups in particular, and created opportunities for populist politicians who use social media to share manipulative content.⁴⁴

1.4.2. The content of the message

In two judgments, the European Court of Human Rights drew the outlines of the jurisprudence of the Court regarding freedom of expression which may apply to one channel of expression, online hate or hate speech. The Court had to balance the need to preserve free speech and the need to protect the individual's rights.

In its decision *Handyside v. the United Kingdom* of 7 December 1976, Article 10.2 of the Convention is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference but also to those that offend, shock or disturb the state or any sector of the population. This means that every formality, condition, restriction or penalty imposed in this sphere must be proportionate to the legitimate aim pursued.

On the other hand, the *Erbakan v. Turkey* judgment of 6 July 2006 states that:

tolerance and respect for the equal dignity of all human beings constitute the foundations of a democratic, pluralistic society. That being so, as a matter of principle it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance.

This is a matter of case law. As already said, hate speech may have many forms. Sex, colour, ethnicity, religion, nationality, sexual orientation, political opinion, disability may serve as pretexts to deliver hateful statements. As a cultural commentator stated before the Communications and Digital Committee of the House of Lords: "we have to fight for freedom of speech and free expression online and distinguish between hate speech and hate speech we hate, which sometimes is hard to see."⁴⁵ The Court stressed the far-reaching harmful effects of hate speech posted on individual's Facebook profile.⁴⁶

36. *Times Newspapers Ltd v. the United Kingdom*, Application Nos. 3002/03 and 23676/03, 10 March 2009; *Ahmet Yildirim v. Turkey*, Application No. 3111/10, section 67, 18 March 2013.

37. *Delfi AS v. Estonia*, Application No. 64569/09, section 147, 16 June 2015.

38. *Editorial Board of Pravoye Delo and Shtekel v. Ukraine*, Application No. 33014/05, section 63, 5 August 2011.

39. *Times Newspapers Ltd v. the United Kingdom*, Application Nos. 3002/03 and 23676/03, section 27, 10 June 2009.

40. *Kalda v. Estonia*, Application No. 17429/10, section 52, 6 June 2016; *Jankovskis v. Lithuania* Application No. 21575/08, section 49, 17 April 2017.

41. *Féret v. Belgium*, Application No. 15615/07, sections 63, 66-71, 16 December 2009; *Willem v. France* Application No. 10883/05, sections 36-38, 16 December 2009.

42. Article 10, Expression and advertising of political positions through the media /Internet in the context of elections/ referendum, ECHR 2018, by reference to the case of *Willem v. France*, Application No. 10883/05, 16 July 2009.

43. *Delfi AS v. Estonia*, Application No. 64569/09, section 110, 16 June 2015; *Annen v. Germany*, Application No. 3690/10, section 67, 26 February 2016.

44. Adam Krzywon, *Summary judicial proceedings as a measure for electoral disinformation: defining the European standard*, Cambridge University Press, 24 June 2021.

45. Free for all? Freedom of expression in the digital age, House of Lords, 22 July 2021, p. 7.

46. *Beizaras and Levickas v. Lithuania*, Application No. 41288/15, section 127, 14 May 2020.

1.4.3. The cases out of the scope of Article 10 of the European Convention on Human Rights

Freedom of expression may not be invoked to justify online hate in certain cases because certain forms of expression are explicitly excluded from the protection of the Convention by Article 17 of the European Convention on Human Rights, which prohibits the abuse of rights.

Nothing in [the] Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

The text of Article 17 is derived from Article 30 of the Universal Declaration of Human Rights of 1948. Equivalent provisions to Article 17 are also found in the International Covenant on Civil and Political Rights of 1966, the American Convention on Human Rights of 1969 and the Charter of Fundamental Rights of the European Union of 2000.

Article 17 prevents applicants from relying on the Convention in order to perform, promote and/or justify acts amounting to or characterised by any of the following (Council of Europe, Guide on Article 17):

- ▶ hatred (*Perinçek v. Switzerland*, Application No. 27510/08, sections 115 and 230, 15 October 2015; *Molnar v. Romania*, Application No. 16637/06, 23 October 2012; *Belkacem v. Belgium*, Application No. 34367/1, 27 June 2017; *Lilliendahl v. Iceland*, Application No. 2927/18, section 39, 12 May 2020);
- ▶ violence (*Hizb ut-Tahrir and Others v. Germany*, Application No. 31098/08, section 73, 12 June 2012; *Kasymakhunov and Saybatalov v. Russia*, Application Nos. 26261/05 and 26377/06, section 106, 14 June 2013; *Kaptan v. Switzerland*, Application No. 55641/00, 12 April 2001; *Belkacem v. Belgium*, Application No. 34367/1, 27 June 2017; *Romanov v. Ukraine*, Application No. 63782 /11, sections 163-166, 16 July 2020);
- ▶ xenophobia and racial discrimination (*Jersild v. Denmark*, Application No. 15890/89, section 35, 23 September 1994; *Féret v. Belgium*, Application No. 15615/07, 16 July 2009; *Ayoub and Others v. France*, Application No. 77400/14, section 134, 8 January 2021);
- ▶ religious hate (*Norwood v. the United Kingdom*, Application No. 23131/03, 16 November 2004; *Belkacem v. Belgium*, Application No. 34367/1, 27 June 2017);
- ▶ homophobia (*Lilliendahl v. Iceland*, 29297/18, 12 May 2020);
- ▶ antisemitism (*Pavel Ivanov v. Russia*, Application No. 35222/04, 20 February 2007; *W.P. and Others v. Poland*, Application No. 42264/98, 2 September 2004);
- ▶ Islamophobia (*Norwood v. the United Kingdom*, Application No. 23131/03, 16 November 2004; *Seurot v. France*, Application No. 57383/00, 18 May 2004; *Soulas and Others v. France*, Application No. 15948/03, 10 October 2008);
- ▶ terrorism and war crimes (*Orban and Others v. France*, 2009, Application No. 20985/05, section 35, 15 April 2009; *Leroy v. France*, Application No. 36109/03, section 27, 6 April 2009; *Roj TV A/S v. Denmark*, Application No. 24683/14, sections 46-47, 17 April 2018);
- ▶ negation and revision of clearly established historical facts, such as the Holocaust (*Lehideux and Isorni v. France*, Application No. 55/1997/839/1045, section 47, 23 September 1998; *M'Bala M'Bala v. France*, Application No. 25239/13, 20 October 2015; *Garaudy v. France*, 7 June 2003; *Witzsch v. Germany* (no. 2) Application No. 7485/03, 13 December 2005);
- ▶ contempt for victims of the Holocaust, of a war and/or of a totalitarian regime (*Witzsch v. Germany* (no. 2) Application No. 7485/03, 13 December 2005; *Fatullayev v. Azerbaijan*, Application No. 40984/07, section 81, 4 October 2010; *Vajnai v. Hungary*, Application No. 33629/06, section 25, 8 October 2008; *Pastörs v. Germany*, Application No. 55225/14, section 39, 3 October 2019);
- ▶ totalitarian ideology, threat to democratic order and other political ideas incompatible with democracy (*Lehideux and Isorni v. France*, Application No. 55/1997/839/1045, section 53, 23 September 1998; *Vona v. Hungary*, Application No. 35943/10, section 36, 9 December 2013; *Vajnai v. Hungary*, Application No. 33629/06, section 25, 8 October 2008; *Kasymakhunov and Saybatalov v. Russia*, Application Nos. 26261/05 and 26377/06, sections 108-113, 14 June 2013; *Refah Partisi (the Welfare Party) and Others v. Turkey*, Application Nos. 41340/98, 41342/98, 41343/98, 41344/98, section 132, 13 February 2003; *Schimanek v. Austria*, Application No. 32307/96, 1 February 2000; *Kühnen v. Germany*, Commission decision, 1988; *German Communist Party (KPD) v. the Federal Republic of Germany*, Commission decision, 250/57, 20 July 1957).

This means that the applicant who falls under these cases will not be entitled to the protection of Article 10 of the European Convention on Human Rights because he or she negates the fundamental values of the Convention.

1.4.4. The cases where speech enjoys the protection offered by Article 10 of the European Convention on Human Rights

When these basic principles are not disregarded, there is room for freedom of expression, which is one of the prerequisites of the right to free elections granted by Article 3 of the protocol to the Convention.

The Court found for instance that a webmaster's criminal conviction for public insult against a mayor in respect of comments published on the internet site of an association chaired by him had been excessive, noting in particular that the comments in question related to expression by the representative body of an association, which was conveying the claims made by its members on a subject of general interest in the context of challenging a municipal policy.⁴⁷

The Court noted there was a breach of the Convention where an NGO was held liable for having described a politician's speech as "verbal racism"⁴⁸ and indicated that the domestic courts had exceeded the margin of appreciation afforded to them and failed to strike a reasonable balance of proportionality between the measures restricting the applicant's organisation's right to freedom of expression and the legitimate aim pursued.

In the case of *Tamiz v. the United Kingdom*, a politician complained of an attack on his reputation on account of the national court's refusal to admit Google's liability for comments that he regarded as defamatory. The Court did not consider there was any evidence of a real and substantial tort. It noted that millions of internet users post possibly offensive or even defamatory comments online, but these comments are likely to be too trivial in character or their publication is too limited to provoke any significant damage to a person's reputation. For that reason, the Court took the view that the real and substantial tort threshold required for defamation proceedings had not been met.⁴⁹

1.4.5. The electoral campaigns

Electoral campaigns represent an incubator in which to determine to what extent free expression may be admitted. In the period preceding an election it is important that opinions and information circulate freely. The Court notes too that the general public has a legitimate interest in being informed about a person running for general election.⁵⁰ As a general rule, the European Court of Human Rights considers that opinions and information pertinent to elections, if they are disseminated during an electoral campaign, should be considered as forming part of a debate on questions of public interest, unless proof to the contrary is offered. Public interest relates to matters which affect the public to such an extent that people may legitimately take an interest in them, matters which attract its attention or matters which concern it to a significant degree, especially if they affect the well-being of citizens or the life of the community. Public interest refers also to matters which are capable of giving rise to considerable controversy, which concern an important social issue or which involve a problem that the public would have an interest in being informed about.⁵¹ According to the Court's case law, in respect of matters of public interest, the restrictions on freedom of expression should be interpreted narrowly.⁵²

According to Article 3 of Protocol No. 1,

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

The Court has considered that in certain circumstances the rights under Article 10 of the Convention and Article 3 of Protocol No. 1 may come into conflict and it may be considered necessary, in the period preceding or during an election, to place certain restrictions of a type which would not usually be acceptable, on freedom of expression, in order to secure the "free expression of the opinion of the people in the choice of the Parliament".⁵³ In striking the balance between these two provisions, the contracting states have a margin of appreciation as they do generally with respect to the organisation of their electoral system.⁵⁴

47. *Renaud v. France*, Application No. 13290/07, 25 May 2010.

48. *GRA Stiftung gegen Rassismus und Antisemitismus v. Switzerland*, Application No. 18597/13, 9 April 2018.

49. *Tamiz v. the United Kingdom*, Application No. 3877/14, 12 October 2017.

50. *Ólafsson v. Iceland*, Application No. 58493/13, section 50, 16 March 2017.

51. *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland*, Application No. 931/13, section 171, 27 June 2017.

52. *Prunea v. Romania*, Application No. 47881/11, section 4, 8 April 2019, dissenting opinion.

53. *Orlovskaya Iskra v. Russia*, Application No. 42911/08, 3 July 2017.

54. *Animal Defenders International v. the United Kingdom*, Application No. 48876/08, section 111, 22 April 2013. Yves-Marie Doublet, *Revue trimestrielle des droits de l'homme*, 98 (2014) p. 483. *Mathieu-Mohin and Clerfayt v. Belgium*, Application No. 9267/81, section 54, 2 March 1987. *TV Vest AS and Rogaland Pensjonistparti v. Norway*, Application No. 48876/08, section 62, 22 April 2013. *Orlovskaya Iskra v. Russia*, Application No. 42911/08, section 134, 3 July 2017.

In the case of *Brzeziński v. Poland*,⁵⁵ which concerned an allegation that the applicant's freedom of expression had been breached on account of comments made by him in an election campaign brochure, the Court noted there had been a violation of Article 10. The contested statements had been made in the context of a debate on issues, which were important for the local community. It held that the language used in the brochure had remained within the limits of admissible exaggeration or provocation, having regard to the ordinary tone and register of the political debate at local level.

In the judgment *Magyar Kétfarkú Kutya Párt v. Hungary* of 20 January 2020, the European Court of Human Rights clarified the extent of the Court's supervision of restrictions on the freedom of expression of political parties in electoral campaigns. It considered that restrictions on freedom of expression in such a context must be subjected to rigorous scrutiny. Rigorous supervision serves to protect democracy since any restriction on freedom of expression in this context without sufficiently foreseeable regulations could harm open political debate, the legitimacy of the voting process, its results and, ultimately, the confidence of citizens in the integrity of democratic institutions and their commitment to the rule of law.⁵⁶

The example of the Polish regulations emphasises the particularity of the period of electoral campaigns regarding the supervision of breaches of freedom of expression and the limits of this supervision. According to the Polish Electoral Act, all candidates may launch judicial proceedings if electoral material contains false data or information, and the Court may verify the truthfulness of the material and stop its dissemination.

If posters, slogans, leaflets, statements or other forms of publicity or campaign materials contain untrue data or information, candidates standing for local election or representatives of electoral committees shall be entitled to apply to the Regional Court for an order:

- (1) for the confiscation of such materials;
- (2) restraining [the defendant] from publishing such data or information;
- (3) for the correction of the information;
- (4) requiring [the defendant] to apologise to the aggrieved party;
- (5) requiring [the defendant] to pay up to PLN10 000 to a charity;
- (6) requiring [the defendant] to pay to the claimant up to PLN10 000 in damages.

§2. The Regional court, sitting with a single judge, shall examine the application referred to in §1 within 24 hours in non-contentious [civil] proceedings. ... The court shall, without undue delay, serve on the interested party referred to in §1, the regional electoral commissioner and the person required to execute the court's decision a decision which will bring the proceedings in the case to an end.

§3. An appeal to the court of Appeal shall lie against the decision of the Regional court provided it is lodged within 24 hours from the moment the decision was delivered. The court of Appeal, sitting as a panel of three judges, shall examine the appeal in non-contentious [civil] proceedings, under the same procedure and within the time-limit referred to in §2. No appeal shall lie against the decision of the court of Appeal and its decision shall be enforceable with immediate effect.

The request has to be examined within 24 hours and the decision of the first instance may be challenged within 24 hours in a second instance. These rules may be efficient if the rulings have taken place before the election, but this was not the case in one litigation.⁵⁷ In another case, the Court considered that false electoral statements made after the election were not linked with the electoral process.⁵⁸ In the *Brzeziński* case, the Court expressed the view that it is necessary to fight false news related to candidates in electoral campaigns to preserve the quality of the public debate in electoral campaigns.⁵⁹ In that case the Court considered the cumulative sanctions of the law disproportionate to the offence.

Sometimes the contents of messages during electoral campaigns have been restricted or removed by platforms and these decisions have been subject to judicial review or to the monitoring of the relevant supervision body.

The German Federal Constitutional Court considered in a decision of 22 May 2019 concerning Facebook and a right-wing political party that an exclusion from using the respondent's services denied the applicant an essential opportunity to promote its political message before the elections to the European Parliament.

55. *Brzeziński v. Poland*, Application No. 47542/07, 25 July 2019.

56. European Court of Human Rights, Annual Report 2020, Case-law Overview, p. 97.

57. *Kwiecień v. Poland*, Application No. 51744/99, section 5, 9 April 2007.

58. *Kita v. Poland*, Application No. 57659/00, sections 44-46, 8 October 2018.

59. *Brzeziński v. Poland*, Application No. 47542/00, section 55, 25 July 2019.

Nonetheless the application was rejected because the applicant did not bring evidence that the restriction imposed by Facebook did cause significant harm.⁶⁰

An example of removal of a video by an operator is provided by YouTube in Switzerland. A video for the electoral campaign of the party SVP in Zurich, which described Eritreans as supposed refugees, was removed by YouTube.⁶¹ The SVP posted it on various social media platforms on 3 October 2019. YouTube blocked the video on 9 October, two weeks before the parliamentary elections, and the Zurich public prosecutor initiated criminal investigations for violation of the Act on Racial Discrimination.

The Spanish Supervision body, la Junta Electoral Central, was petitioned in 2021 by a political party (Vox) during parliamentary elections in Catalonia because Twitter suspended the account of this party which showed violent images related to migrants. The message which triggered the decision of Twitter was the following: “We suppose that approximately 0.2% are responsible for 93% of the complaints”. Muslims were targeted. The Junta Electoral Central rejected the complaint of Vox. It considered that the central electoral administration was entitled to intervene when the principles of political pluralism, transparency, objectivity and equality between candidates had been deeply violated, which was not the case.⁶²

The scope of Article 3 of Protocol No. 1 applies not only to parliamentary elections but to referendums too.⁶³

1.4.6. The reasoning of the Court

1.4.6.1. The margin of appreciation of the states

The European Court of Human Rights recognises that the contracting states have a wide margin of appreciation with regard to their electoral systems. For instance concerning political advertisement, the Court has stated that the political nature of advertisements that were prohibited called for strict scrutiny and a correspondingly circumscribed margin of appreciation with the need for restrictions. There must be a reasonable relationship of proportionality between the legitimate aim pursued by the prohibition and the means deployed to achieve the aim.⁶⁴

If we go further into detail, the width of the margin of interpretation depends on the context. It will be narrow when the expression involved is in the context of a political debate. It will be narrow too when the work of a political party is at issue. But it will be wide when what is involved is the organisation and running of an electoral process and when the issue at hand is not governed by a European consensus (O’Leary 2020: 16). It will also be wide when hate speech⁶⁵ or speech inciting violence⁶⁶ is at stake.

In order to establish if the applicant pursues any of the aims prohibited by Article 17 of the European Convention on Human Rights, the Court examines the “main content”, the “general tone” or the “general tenor” of the act.⁶⁷ The Court may also have regard to whether the domestic courts have examined the case from the standpoint of the specific prohibited aim which, as claimed by the government, the applicant pursues.⁶⁸

1.4.6.2. The value judgments and the facts

According to the jurisprudence of the European Court of Human Rights, while the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof.⁶⁹ Assertions about matters of public interest may constitute value judgments rather than statements of fact. In order to distinguish between a factual allegation and a value judgment, it is necessary to appreciate the circumstances of the case and the general tone of the remark.⁷⁰ It is up to the voters to evaluate the truthfulness of a statement or information during an electoral campaign.

60. See www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2019/bvg19-038.html.

61. See www.swissinfo.ch/eng/parliamentary-elections_zurich-public-prosecutor-opens-investigation-into-possible-racism-behind-campaign-video/45374154.

62. Acuerdo de la Junta Electoral Central de 25 de Febrero de 2021, 293/2021.

63. *Magyar Kétfarkú Kutya Párt v. Hungary*, Application No. 201/17, section 99, 20 January 2020.

64. *TV Vest As and Rogaland Pensjonist parti v. Norway*, Application No. 21132/05, 11 December 2008.

65. *Gündüz v. Turkey*, Application No. 35071/97, section 41, 14 July 2004.

66. *Sürek v. Turkey*, Application No. 26682/95, section 62, 8 July 1999.

67. *M’Bala M’Bala v. France*, Application No. 25239/13, section 41, 20 October 2015.

68. *Ilgar Mammadov v. Azerbaijan*, Application No. 15172/13, section 41, 29 May 2019.

69. *Kwiecień v. Poland*, Application No. 51744/44, section 53, 9 January 2007. *Morice v. France*, Application No. 29369/10, section 126, 23 April 2015.

70. *Brasilier v. France*, Application No. 71343/01, section 37, 11 July 2006.

1.4.6.3. The duties of the internet portals

Precisely concerning the duties of internet news portals and the striking of a fair balance between the right to freedom of expression and the right to reputation of the person or entity referred to in the comments, where there is an application to have comments removed by an internet portal, the Court has identified four criteria:⁷¹

- ▶ the context and content of the comments;
- ▶ the liability of the authors of the comments;
- ▶ the measures taken by the applicants;
- ▶ the conduct of the aggrieved party and the consequences for the aggrieved party and for the applicants.

On relying on these criteria, the Court took the view that the order given to an internet portal to pay damages for insulting anonymous comments posted on its site, regarding the extreme nature of the comments which amounted to hate speech, was justified.⁷²

1.4.6.4. The blocking of access to internet

The Court emphasised the need to weigh up the various interests at stake, in particular by assessing whether there is a need to block all access to particular sites,⁷³ and it indicated that the authorities should have taken into consideration, among other aspects, the fact that such a measure, by rendering large quantities of information inaccessible, was bound to substantially restrict the rights of internet users and to have a significant collateral effect.⁷⁴

With regard to the blocking of the YouTube video-hosting site, the Court noted (in *Cengiz and Others*, sections 52, 53, 55) that the applicants, although they were mere users who were not directly targeted by the decision to block access to YouTube, could legitimately claim that the contested measure had affected their right to receive and impart information or ideas, in that they were users of YouTube and that this platform was unique, on account of its characteristics, its accessibility and above all its potential impact, and that no alternatives were available to the applicants.

With regard to whether the blocking measure was justified, the Court held that, although such prior restraints were not incompatible with the Convention as a matter of principle, they had nonetheless to form part of a particularly strict legal framework ensuring both tight control over the scope of the ban and effective judicial review to prevent abuses. The judicial review of such a measure, based on the weighing-up of the competing interests at stake and designed to strike a balance between them, is inconceivable without a framework establishing precise and specific rules regarding the application of preventive restrictions on freedom of expression.⁷⁵

In the *Bulgakov v. Russia* case, concerning the blocking by court order of an entire website on account of the presence of forbidden material and its continuing blocking even after that material had been removed, the Court held that there had been no legal basis for the blocking order in that the legislation on which the order was based did not permit the authorities to block access to an entire internet site.⁷⁶

1.5. The detection of hate speech by political parties or candidates

As self-regulation and statutory regulations may be insufficient, political parties and candidates may protect themselves by detecting hate speech and reacting quickly. The ways which are used to detect potentially misleading and fake content – by capturing and analysing textual information as it flows through search engines – may be transposed to hate speech. For instance, during the campaign of the 2021 General Election in Germany, the CSU (Bavarian Christian Social Union) released a website – *Faktenheld.de* – on false news on the web concerning the pandemics and positions of the party. The Green Party on its part hired volunteers to detect false news and to respond to it. According to a report, the leader of the German Green Party was the political leader who was most often a victim of disinformation during the electoral campaign (28% of all fake news against Annalena Baerbock, the leader of the Green Party, 11% against Armin Laschet, the leader of

71. *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary*, Application No. 22947/13, sections 60 *et seq.*, 2 May 2016; *Delfi AS v. Estonia*, Application No. 64569/09, sections 142 *et seq.*, 16 June 2015.

72. *Delfi AS v. Estonia*, Application No. 64569/09, 16 June 2015.

73. *Ahmet Yildirim v. Turkey*, Application No. 3111/10, section 66, 18 March 2013.

74. *Cengiz and Others v. Turkey*, Application Nos. 482226/10 and 14027/11, section 64, 1 December 2015.

75. *Ahmet Yildirim v. Turkey*, Application No. 3111/10, section 64, 18 March 2013.

76. *Bulgakov v. Russia*, Application No. 20159/15, section 34, 23 June 2020.

the Christian Democrats).⁷⁷ An internal Facebook group of 2 500 Green Party members analysed the content which was disseminated, and in many cases the party members intervened with Facebook and Twitter. Very often the invitation from the Green supporters to remove the content was sufficient.⁷⁸

1.6. National regulations

Addressing hate speech in electoral campaigns requires a legal response and enforcement of sanctions which may have several forms. These regulations have different approaches to remedying hate speech. Some focus their attention on the interference of foreign platforms. Others use the general notion of intimidation, which is at the crossover between hate speech and disinformation. In any case transparency is a common concern for these regulations. Besides legislative responses, actions of prevention are another way to combat this abuse of expression among member states of the Council of Europe and outside. Some valuable lessons are worth being held up as examples.

1.6.1. Australia

1.6.1.1. Legislative actions

Several initiatives deserve attention. Besides the 2018 Act on National Security, which added new secrecy provisions, there are new offences of foreign interference and sharing of abhorrent violent material. The Foreign Influence Transparency Scheme Act⁷⁹ establishes a new system that “introduces registration obligations for persons and entities who have arrangements with and undertake certain activities on behalf of foreign principals”. Whether a person or entity is required to register will depend on who the foreign principal is, the nature of the activities, the purpose for which the activities are undertaken and, in some cases, whether the person has held a senior public position in Australia.

Disclosure requirements are imposed on people and entities who undertake communications activity in Australia on behalf of a foreign principal for the purpose of political or governmental influence or who produce information or material on behalf of a foreign principal for the purpose of being communicated or distributed to the public. The disclosure must identify:

- ▶ who is undertaking the communications activity;
- ▶ the foreign principal on whose behalf the communications activity is undertaken.

Under the Criminal Code Amendment Act 2019, providers of internet are required to remove “abhorrent violent material” produced by a person engaged in “violent conduct”, including murder and attempted murder.⁸⁰

1.6.1.2. Non-legislative actions

In June 2018 an Electoral Integrity Assurance Taskforce was established to guard against cyberattacks and interference in elections. It is led by the Department of Home Affairs with the involvement of the Australian Security Intelligence Organisation and the Australian Federal Police.

The Australian Electoral Commission (AEC) launched before the 2019 Federal Election a social media advertising campaign to encourage voters to “carefully check the source of electoral communication they see or hear”. The name of this campaign was Stop and Consider. It involved advertising on platforms such as Facebook, Twitter and Instagram. In February 2019, the AEC held meetings with Facebook and Google to address foreign interference during electoral campaigns.

1.6.2. Austria

1.6.2.1. Legislative actions

The Federal Act on measures to protect users on communication platforms has been in force since 1 January 2021.⁸¹ Its purpose is to promote the responsible and transparent handling of user reports on the content

77. See https://secure.avaaz.org/campaign/de/bundestagswahl_2021.

78. See [Br.de/bundestagswahl/parteien-gegen-fakenews](https://www.br.de/bundestagswahl/parteien-gegen-fakenews).

79. See www.legislation.gov.au/Details/C2018A00063.

80. See www.legislation.gov.au/Details/C2019A00038.

81. Bundesgesetz über Maßnahmen zum Schutz der Nutzer auf Kommunikationsplattformen, available at www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2020_I_151/BGBLA_2020_I_151.html.

on communication platforms and the expeditious handling of such reports. Service providers shall set up an effective and transparent procedure for handling and processing reports on allegedly illegal content available on the communication platform.

Procedure is designed in such a way that users of the communication platforms have access to functionalities that are easy to find and easy to use. Dangerous threats, incitement to hatred and violence are parts of the enumeration of illegal content under this law. The service provider shall ensure that reported content:

- ▶ insofar as its illegality is already evident to a legal, lay person without further investigation, is either removed or access to it is disabled without delay but no later than within 24 hours after receipt of the report;
- ▶ insofar as its illegality becomes apparent only after a detailed examination, is removed or access to it is disabled without delay after completion of this examination but no later than within seven days of receipt of the report.

Users are informed of the results of the review by the service providers within two weeks of the filing of the application. Service providers with over 1 million registered users are obliged to prepare a report on the handling of reports of allegedly illegal content on an annual basis or on a half-yearly basis. Users can file a complaint with the complaints body if they have not received an answer or when the two parties in the dispute have not been able to reach a settlement of the dispute. If more than five well-founded complaints about the inadequacy of the measures taken by a service provider are received within a month by the complaints body, the supervisory body shall verify the compliance of the measures with the law. The fines, depending on the seriousness of the violation, may be up to € 10 million on a service provider. To balance these rights, complaints may be filed by platforms which have been removed or blocked.

1.6.2.2. Non-legislative actions

On 26 April 2017 the Higher Regional Court of Vienna imposed on Facebook, not only at national level but worldwide, the removal of hate posts that insulted the leader of the Austrian Green Party, who was described as a “lousy traitor” and a “corrupt oaf”. The court stated that Austrian law had to prevail, while Facebook considered that Californian law regarding the situation of the head office of the company or Irish law regarding the situation of the European head office of the company had to be implemented.⁸²

The case was challenged in the Supreme Court, which decided to stay the proceedings and to refer the question to the Court of Justice of the EU for a preliminary ruling. In its decision of 3 October 2019, the Court of Justice of the EU held that Facebook has no obligation to monitor posts and actively investigate them for illegal content. But, as content spreads rapidly via social networks, a platform operator which becomes aware of illegal content can be ordered to remove not only the content of the user concerned but also content stored by other users worldwide.⁸³

This decision was confirmed on 15 September 2020 by the Supreme Court, which ordered that Facebook must not only remove the offending post itself but also posts by other users with identical words and “similar meaning”.⁸⁴

A special National Hate Speech Committee (www.nohatespeech.at) was set up in June 2016 to raise awareness of this topic and to act against discrimination. It has made recommendations to the federal government and to the *Länder* governments.

1.6.3. Canada

1.6.3.1. Legislative actions

According to section 91 (1) b of the Canada Elections Act, “No person or entity shall with the intention of affecting the results of an election, make or publish, during the election period, a false statement about the citizenship, place of birth, education, professional qualifications or membership in a group or association of a candidate, a prospective candidate, the leader of a political party or a public figure associated with a political party”.

82. Oberlandsgericht Wien beschl. v 26 4 2017 5 r 5/ 17t beckrs 2017.

83. See C18/18, ECLI:EU:C:2019:821, available at https://rdb.manz.at/document/ris.jur.JJR_20171025_OGH0002_0060OB00116_17B0000_001.

84. See OGH|6Ob195/19y, available at www.ris.bka.gv.at/Dokumente/Justiz/JJT_20200915_OGH0002_0060OB00195_19Y0000_000/JJT_20200915_OGH0002_0060OB00195_19Y0000_000.pdf.

The Canadian legislation emphasises the prevention of foreign interference in elections. Foreigners and foreign entities cannot buy regulated ads during the election period, defined as a maximum of 50 days. Online platforms are submitted to transparency and integrity requirements. According to Section 319 of the Act, an online platform is “an internet site or internet application whose owner or operator, in the course of their commercial activities, sells, directly or indirectly, advertising space on the site or application to persons or groups”.

1.6.3.2. Non-legislative actions

The Digital Charter Implementation Act proposed by the government in 2020 contains 10 principles. The ninth principle calls for content: “Free from hate and violence” so “Canadians can expect that digital platforms will not foster or disseminate hate, violent extremism or criminal content”.

The government offers technical advice and assistance in online security measures to political parties and election administrators to help protect organisational systems. The Canadian Security Intelligence Service and the Communication Security Establishment are working with the agency in charge of conducting federal elections, Elections Canada. The government has set up a Security and Intelligence Threats to Elections (SITE) Task Force.⁸⁵

1.6.4. Denmark

1.6.4.1. Legislative actions

Defamation, insults, persecution and hate speech are criminalised in Denmark by sections 226b, 226c and 267 Straffeloven. Unlawful influence activities by foreign governments have been criminalised by section 108 Straffeloven. Unlawful activities include activities that affect public opinion generally.⁸⁶

1.6.4.2. Non-legislative actions

The Danish Security Intelligence Service and the Danish Defence Intelligence Service together created in 2018 a command centre for countering misinformation from foreign sources.

1.6.5. France

1.6.5.1. Legislative actions

There are several tools to combat political statements that incite to violence or hatred.

Concerning defamation in the press, if the defamation campaign has been made during an electoral campaign and if the victim is one candidate, just 24 hours will elapse between the summons and the court appearance,⁸⁷ whereas this time period amounts usually to 10 days. The same rule applies to broadcasts.⁸⁸ It means that the evidence must be brought immediately to the criminal court. Besides one year of imprisonment and a fine of €45 000, the judge may impose an additional penalty, which is disqualification from being elected during the next five years.⁸⁹ Until now two holders of an elected office have been disqualified. A resolution was tabled on 9 November 2021 in the Lower House to emphasise this legal provision to the prosecutors.⁹⁰

Concerning hate speech, two acts must be analysed. The first one did not come into force because it was partly declared unconstitutional, but it has to be mentioned given the principles at stake.⁹¹ Regarding freedom of expression and the envisaged procedure, the judgment on the unconstitutionality of this bill deserves greater attention. The second one is focused precisely on electoral campaigns.⁹²

85. Government Responses to Disinformation on Social Media Platforms, Canada, p. 40, The Law Library of Congress, September 2019.

86. Government Responses to Disinformation on Social Media Platforms, Denmark, p. 55, The Law Library of Congress, September 2019.

87. Article 54 of the Act of 29 July 1881 on the freedom of the press.

88. Article 6 of the Act 82-652 of 29 July 1982 on broadcasting.

89. Article 24 of the Act of 29 July 1881 on the freedom of the press.

90. Assemblée Nationale 4660, Proposition de résolution contre la banalisation du discours de haine dans le débat public, at www.assemblee-nationale.fr/dyn/15/textes/115b4660_proposition-resolution.

91. 2020-801 DC, 18 June 2020 on broadcasting www.conseil-constitutionnel.fr/decision/2020/2020801DC.htm.

92. 2018-773 DC, 20 December 2018, Act on the fight against the manipulation of information www.conseil-constitutionnel.fr/en/decision/2018/2018773DC.htm.

The first bill considered that certain online platform operators whose activities exceed thresholds laid down by decree are to be held criminally liable if they do not remove or disable access to any content notified to them when that content might manifestly fall within the scope of certain criminal law categories listed in those provisions. The following offences are concerned: condoning the commission of certain crimes; incitement to discrimination, hatred or violence against a person or group of people on the grounds that they belong, or do not belong, to a particular ethnic group, nation, race or religion, or on the grounds of their gender, sexual orientation, gender identity or disability or incitement to discrimination against persons with disabilities.

Parliament had obliged online platform operators to remove the content concerned within 24 hours. However, given the difficulties involved in establishing that the reported content is manifestly unlawful in nature and the risk of numerous notifications that may turn out to be unfounded, such a time limit was extremely short. Parliament's intention was to establish a ground for exempting online platform operators from liability, but that ground – according to which “the intentional character of the infringement may result from the lack of a proportionate and necessary examination of the content reported” – was not drafted in terms that allowed the scope of the exemption to be determined. No other specific ground for an exemption from liability was provided for, such as multiple notifications being made at once. Failure to meet the obligation to remove or disable access to manifestly unlawful content was punishable by a fine of €250 000. Criminal penalties were incurred for each failure to remove content, with no account being taken of whether notifications were repeated.

Therefore, taking into account the difficulties involved in establishing, within the prescribed time limit, that the content reported was manifestly unlawful in nature, the penalty incurred from the first infringement and the lack of any specific ground for exemption from liability, the Constitutional Council considered that these provisions restricted the exercise of freedom of expression and communication in a manner that was not necessary, appropriate and proportionate and were unconstitutional.

The attempts to influence views in the French presidential election of 2017 through political disinformation bots pushed the government to table a draft bill on the fight against the manipulation of information. The Constitutional Council on that occasion stated that freedom of expression has a particular importance in political debate and during electoral campaigns. It guarantees both each person's information and the defence of all opinions but also the defence, against consequences of abuse committed, on its merits and allowing for responding to and denouncing them. The Constitutional Council considered that it is Parliament's responsibility to balance the constitutional principle of the honesty of elections with the constitutional freedom of expression and communication.

On the other hand, the bill, which has been declared constitutional,⁹³ establishes an interlocutory proceeding to stop the spread of some false information likely to harm the honesty of elections. For that purpose, Parliament sought to stop the risk of citizens being tricked or manipulated in exercising their vote by mass dissemination of such information on online public communication services. Thus, it sought to ensure the clarity of electoral debate and compliance with the principle of the honesty of elections.

Secondly, the legislature limited applying this procedure to the period of electoral campaigns beginning three months before the first day of the month preceding a general election or a referendum and ending on the date of the round of elections or when these elections are held.

Thirdly, the interlocutory proceedings only relate to public content on online public communication services. However, these services lend themselves more easily to massive and co-ordinated manipulation due to their multitude and the particular ways of disseminating their content.

Fourthly, the legislature strictly defined the information that may be subject to interlocutory proceedings. On the one hand, these proceedings are only intended for incorrect or misleading allegations or accusations, those which have the effect of altering the honesty of the upcoming elections. These allegations or accusations do not relate to opinions, parodies, partial inaccuracies or simple exaggerations. They are those for which it is possible to objectively demonstrate falseness. On the other hand, only three cumulative conditions for spreading such allegations or accusations may be questioned: they must be artificial or computerised, deliberate and spread by mass distribution.

A request to close a tweet on this basis was rejected by the judiciary precisely because these three conditions were not fulfilled.⁹⁴ But on 6 July 2021, the judicial court of Paris invited Twitter to submit any document

93. Loi 2020-766 24 Juin 2020 visant à lutter contre les contenus haineux sur internet, available at www.legifrance.gouv.fr/jorf/id/JORFTEXT000042031970/.

94. TGI Paris 17 May 2020, Marie Pierre Vieu and Pierre Ouzoulias v. Twitter and Christophe Castaner. Christiane Féral-Schuhl, *Cyberdroit* [712.02] Dalloz, Paris, 2020.

of the operator used against hate speech within two months. The relevant documents were the number, the citizenship, the mother language of the persons who were involved in the supervision of the users of the French service providers as well as the number of supervised cases, the criteria of the removals and the number of prosecutions.

Concerning broadcasts, the same act against the manipulation of information grants the Broadcast Authority the power to suspend the broadcast of a radio or television service subject to an agreement entered into with a legal person controlled by a foreign state or placed under the influence of this state in the event that they disseminate false information during an electoral period. This provision seeks to ensure clarity in electoral debates and respect of the principle of the honesty of elections, as stated by the Constitutional Council. Suspension powers may only occur during the three months preceding the first day of the month of the election of the President of the Republic, general election and elections for senators and terminating on the date of the round of elections when these elections are held. It can only be exercised if the radio or television service disseminates “deliberately, false information that has the effect of influencing the honesty of elections”. False information is understood as including incorrect or misleading allegations or accusations of facts. These allegations or accusations do not relate to opinions, parodies, partial inaccuracies or simple exaggerations.

1.6.5.2. The jurisprudence of the criminal judge

Defamation against a person if it has a discriminatory dimension will be punished by a fine which is higher than an ordinary defamation (€45 000 instead of €12 000) and by imprisonment of one year. The limitation period is one year for discriminatory insults based on sex, race or ethnicity, while the limitation period in the press is three months.⁹⁵

Defamation is punished during electoral campaigns as in normal times, but the judge considers the context of the electoral competition. The judge must assess if the attacks against a candidate are motivated by animosity or revenge or by the wish to inform voters. Good faith may be admitted and the intention to commit an offence will be less recognised than in usual times.⁹⁶ For instance the judge will consider if the message is part of the political debate and whether it relies on facts.⁹⁷

Pursuant to Article L. 97 of the Electoral Code, “those who, thanks to false news, slanderous rumours or other fraudulent manoeuvres, have provoked or diverted votes, or determined one or more voters to abstain from voting, will be punished by one year’s imprisonment and a fine of 15 000 euros”. Dissemination of false news against a candidate could obviously encourage the rejection of this candidate in the campaign. For that reason, a candidate responsible for this dissemination has been punished by a fine of € 3 050 (TGI Nancy, 3e ch., 3 July 1996).

1.6.5.3. The jurisprudence of the electoral judge

Traditionally the electoral judge has a pragmatic approach to the impact of false or malicious statements.

For instance, the Constitutional Council has considered that a pamphlet which made allegations against an applicant who was a candidate for legislative elections exceeded the normal bounds of electoral polemics, but the investigation revealed that its content was in the public domain several weeks before the election campaign. The candidate had adequate means of responding. Moreover, it was not proven that distribution was on a massive scale.⁹⁸

The number of votes cast is also taken into account by the judge. In several cases the Constitutional Council took the view that if a candidate insulted an adversary in pamphlets⁹⁹ or newspapers,¹⁰⁰ it had no effect on the outcome of the election. However open to criticism they may be, the insults and threats against supporters of a candidate during an electoral campaign did not influence the outcome of a ballot.¹⁰¹ If the applicant denounced a campaign of defamation against him and if the facts were supposed to be established, given the

95. Articles 24 and 65 of the Act of 29 July 1881 on the freedom of the press.

96. Cour de cassation 24 November 2000, 97 81.554 at www.legifrance.gouv.fr/juri/id/JURITEXT000007071152.

97. Cour de cassation 8 January 2019, 18-81.286 at www.doctrine.fr/d/CASS/2019/JURITEXT0000038069798.

98. Decision 97-2267, 25 November 1997, AN Martinique, constituency 1, section 4 at www.conseil-constitutionnel.fr/decision/1997/972267an.htm.

99. Decision 62-267 AN, 29 January 1963, section 4, Rec.p. 88 at www.conseil-constitutionnel.fr/decision/1963/62267an.htm.

100. Decision 59-232 AN, 11 December 1959, sections 4 and 5, Rec.p. 259 at www.conseil-constitutionnel.fr/decision/1959/59232AN.htm.

101. Decision 2007-4176 AN, 26 June 2008, section 2, Rec.p. 329 at www.conseil-constitutionnel.fr/decision/2008/20074176an.htm.

difference of votes cast, these facts were not liable to affect the outcome of the ballot.¹⁰² The dissemination of pamphlets which exceeded the limits of the usual electoral debate, and which were so violent that it was impossible to react, did not affect the electoral result given the difference in votes.¹⁰³

On the other hand, serious personal charges against candidates which exceed what is normally admitted may lead to the annulment of the election.¹⁰⁴ Where a candidate accused his adversary of disseminating false documents while he disseminated authentic documents, it damaged the reputation of his adversary and, as the election result was close, the election was annulled.¹⁰⁵ Unchallenged remarks clearly implying questions about the private life of a candidate as well as allegations during the campaign justified the annulment of the election, given the slight difference of voices.¹⁰⁶

1.6.5.4. Actions of relevant authorities

During the campaign for the presidential election 2017, a task force set up by the National Supervision Committee of the presidential election watched over social platforms to evaluate how viral were hate speech and fake news. It could not have access for obvious reasons to private messages and only looked into public messages. During the electoral ballots the teams were increased in strength. One platform stated that a candidate allegedly had an offshore bank account for instance. The committee referred the case to the public prosecutor and the decision of the committee was made public.

The Broadcast Authority released on 15 May 2019 instructions which encouraged the platforms to detect false information and to inform the users of the identity of the physical person or the legal person that was funding those platforms promoting content related to a debate of public interest as it is understood by the European Court of Human Rights.¹⁰⁷

A special unit in charge of the prosecution of hate speech in general was created by the prosecutor's office of Paris in January 2021 and is currently investigating 140 cases.

A far-right association which did not put forward candidates in elections but took part in the political debate was dissolved by a decree (Article L 212-1,6 of the internal security code) deliberated upon in the Council of Ministers of 3 March 2021 because it incited discrimination, hatred and violence, especially against strangers. The association referred the matter to the Council of State, which validated the administrative dissolution¹⁰⁸ on 3 May 2021. It held that Article 10 of the European Convention on Human Rights had not been violated by this decision of dissolution.

A department was set up by the general secretary of national defence in July 2021 to prevent foreign online attacks and it is in charge of co-ordinating the activities of the ministries in that field.¹⁰⁹

In September 2021 the Broadcast Authority released a report noting that operators have achieved progress in removing illegal content or fake news. Facebook and Instagram should have removed 12 million items of illegal content related to the Covid pandemic since March 2021, for instance. But even if the operators now co-operate more deeply with the public authorities, their responses are often imprecise, and they invoke business secrecy.

A working group of experts was charged by the President of the Republic on 29 September 2021 to make recommendations to fight hate speech and disinformation.

1.6.6. Germany

1.6.6.1. Legislative actions

The relevant legislation is the Act to Improve Enforcement of the Law in Social Networks (Network Enforcement Act, NetzDG) – Basic Information (2017), which aims to fight hate crime, criminally punishable fake news and other unlawful content on social networks more effectively. This includes insult, malicious

102. Decision 2012-4560 AN, 13 July 2012, section 4, Rec.p. 358 at www.conseil-constitutionnel.fr/decision/2012/20124560an.htm

103. Conseil d'État, 29 July 2002, Élections municipales de La Grande-Motte, Rec.p. 747 at www.legifrance.gouv.fr/ceta/id/CETATEXT000008094878.

104. Conseil d'État, 26 May 1978, Élections municipales de Briançon, Rec.p. 820 at www.legifrance.gouv.fr/ceta/id/CETATEXT000007659612/.

105. Conseil d'État, 1 February 1980, Élections cantonales de Rombas, Rec.p. 68

106. Conseil d'État, 8 June 2009, Élections municipales d'Aix-en-Provence, Rec.p. 229.

107. See www.legifrance.gouv.fr/jorf/id/JORFTEXT000038480745.

108. See www.conseil-etat.fr/fr/arianeweb/CE/decision/2021-05-03/451743.

109. Décret 2021-922 13 July 2021, *Official Gazette* 14 July 2021, available at www.legifrance.gouv.fr/jorf/id/JORFTEXT000043788361.

gossip, defamation, public incitement to crime, incitement to hatred, disseminating portrayals of violence and threatening the commission of a felony.¹¹⁰

The act defines binding standards for effective and transparent complaints management. The operators of social networks will be subject to the following obligations. They must:

- ▶ offer users an easily recognisable, directly accessible and permanently available procedure for reporting criminally punishable content;
- ▶ immediately take notice of content reported to them by users and examine whether that content might violate criminal law;
- ▶ take down, or block access to, manifestly unlawful content within 24 hours of receiving a complaint.

Other criminal content must generally be taken down or blocked within seven days of receiving a complaint. Alternatively, social networks may refer the content concerned to a “recognised institution of regulated self-governance” on the understanding that they will accept the decision of that institution. The institution must then also make its decision on whether the content is unlawful within seven days. They must inform users of all decisions taken in response to their complaints and provide justification.

The operators of social networks have reporting obligations. They are obliged to submit biannual reports on their handling of complaints about criminally punishable content. These reports must contain information, for example, on the volume of complaints and the decision-making practices of the network, as well as about the teams responsible for processing reported content. The reports must be made available to everybody on the internet.

Social networks that fail to set up a complaints management system or do not set one up properly – especially where this means that they do not delete criminal content in full, on time or at all – are committing a regulatory offence. This is punishable with a fine of up to €5 million against the person responsible for the complaints management system. The fine against the company itself can be up to €50 million. A fine can also be imposed if the social network does not comply with its reporting duties in full or at all. The Ministry of Justice published instructions on the regime of fines applying to people who infringe the law (Leitlinien zur Festsetzung von Geldbußen im Bereich des Netzwerkdurchsetzungsgesetzes vom 22. März 2018).

To ensure that the law is enforced more effectively, social networks are now obliged – regardless of where they are based – to name a person in Germany who is authorised to receive service of process in regulatory fine and civil proceedings, and publish details of this person on their website. Social networks must also name a person in Germany authorised to receive information requests from law enforcement authorities. Moreover, networks will have to ensure that they can respond swiftly to these requests. Violations of the duty to name a person authorised to receive service or information requests can also result in a fine.

A right to disclosure has been introduced. Anyone whose general personality rights are violated by the criminal offences covered by the new act will, as a rule, be able to demand that the social network concerned must disclose details of who committed the offence. Such entitlement to information is founded in existing general principles of civil law. Operators of social networks will be given the power under data protection law to disclose the subscriber information of the infringer to the injured party. To do so, however, the social network must have been ordered to disclose this data by a civil court with jurisdiction over the matter (judicial scrutiny reservation).

On 28 June 2021, the amended Network Enforcement Act entered into force. The amendment aims to increase the information content and comparability of social media providers’ transparency reports, resolve contradictory procedures and improve the user-friendliness of the reporting channels for complaints about unlawful content. The amendment also introduces an appeals procedure for measures taken by the social network provider. The powers of the Federal Office of Justice are expanded to include supervisory powers. Lastly, due to new requirements under the EU Audiovisual Media Services Directive, video-sharing platform services are included in the scope of the Network Enforcement Act.¹¹¹ What remains problematic is that the online platforms decide themselves what is hate speech or a classic expression of public opinion (Doublet 2021). For the period from 1 July 2020 until 31 December 2020, 4 211 complaints were tabled against Facebook, 323 792 against YouTube and 81 469 against Twitter.¹¹² It should be noted that the access to complaints is very easy and can be made directly online.¹¹³

110. See www.bmfv.de/DE/Themen/FokusThemen/NetzDG/NetzDG_EN_node.html.

111. See www.loc.gov/item/global-legal-monitor/2021-07-06/germany-network-enforcement-act-amended-to-better-fight-online-hate-speech/.

112. Antwort der Bundesregierung auf die kleine Anfrage der Abgeordneten Manuel Höflin, Stephan Thomae, Grigorios Aggelidis, weiterer Abgeordneter und der Fraktion der FDP, BT Drs. 19/28631, 19.04.2021.

113. See www.bundesjustizamt.de/DE/Themen/Buergerdienste/NetzDG/Service/Formulare/Formulare_node.html.

1.6.6.2. Non-legislative actions

A department for non-legislative actions (Politische Ordnungsmodelle und hybride Bedrohungen) was created in 2018 inside the home ministry, which manages the hybrid structure with other relevant ministries and authorities to prevent, detect and react to hybrid threats. It is a difficult to identify a hybrid threat, which is an action, conducted by state or non-state actors, whose goal is to undermine or harm a target by combining overt and covert military and non-military means. The government supports the development of regional centres and professional communication instruments as countermeasures against offline and online disinformation.¹¹⁴

In its decision on the broadcasting licence fee on 20 July 2021, the Federal Constitutional Court noted that this licence was used, *inter alia* to fund research on news, to select news and to refuse to publish fake news.¹¹⁵

The report on cybersecurity strategy for Germany released in September 2021 at the federal level calls for a strengthening of the security during electoral campaigns by providing advice, identifying the risks and raising awareness of the stakeholders.¹¹⁶ This report pays attention to the association of cybersecurity with elections. Protecting elections is viewed as a cybersecurity challenge. The intelligence services are responsible for investigating cyberattacks intending to influence the elections and serve as an early-warning system. The federal authorities analyse risks, identify security requirements and serve as points of contact in cybersecurity concerns in regard to elections.¹¹⁷ A special threat situation report specific to the issue of elections lists malicious actors, their motives and their modus operandi.

1.6.7. Italy

1.6.7.1. Legislative actions

The fight against fake news is regulated by Article 656 of the Criminal Code. The disclosure or the dissemination of false, tendentious news that may disturb public order, even when the content is not illegal, is subject to three months' imprisonment and a fine up to € 309. Legal (public) order is understood as the order on which social coexistence is based (Camera dei deputati XVIII). Defamation is liable to three months' imprisonment or a fine of € 516 (Article 595). People who instigate acts of violence for racial, ethnic, national or religious reasons will be punished by one and a half years' imprisonment or a fine of € 6 000 (Article 604-6 bis).

A draft law increases the fines up to € 5 000 against persons who disseminate fake, exaggerated or biased news with false data over online platforms when the content itself is not punished (Article 656 bis). The second clause of this provision sets up a right for compensation when dissemination was liable to slander. It refers to "*atti di violenza a sfondo razziale, sessuale o comunque di natura discriminatoria*".¹¹⁸ News which harms the formation of the political will of the people or disturbs public opinion may be punished by one year's imprisonment or a fine of up to € 5 000. Before the elections of 2018 people were entitled to use an internet portal created on 4 March 2018 by the government to refer to the police cases of disinformation.

1.6.7.2. Non-legislative actions

In its judgment of 31 July 2013, the Cassation Court extended Article 416 of the Criminal Code about criminal associations to cover hate speech through virtual communities, blogs and social online platforms. In February 2018, the Media Supervision Authority – la Autorita per le Garanzie nelle Comunicazioni (AGCOM) – released guidelines which granted equal access to all political parties, that is to say to candidates on online platforms. They require from these platforms an obligation of reporting any illegal content. AGCOM adopted a regulation to fight hate speech on 15 May 2019.¹¹⁹ Providers of audiovisual and radio video services subject to Italian jurisdiction are called to ensure respect for human dignity and the principle of non-discrimination and contrast to instigation of violence and hatred towards groups of people or members of such groups defined with reference to sex, racial or ethnic origin, religion, disability, age or sexual orientation, any other characteristic or personal situation. The providers are invited to avoid any expression such as titles which can directly or indirectly "incite, promote or justify" the hate speeches, the discrimination that offends human dignity or in extreme cases can lead to violence, disorder and crime against a person or a group of people (Pollicino 2020).

114. Government Responses to Disinformation on Social Media Platforms, Germany p. 90, Law Library of Congress, September 2019.

115. See www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2021/07/rs20210720_1bvr275620.html.

116. See www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/2021/09/cybersicherheitsstrategie-2021.pdf.

117. See www.bmi.bund.de/SharedDocs/downloads/EN/themen/it-digital-policy/cyber-security-strategy-for-germany2021.pdf.

118. Translates as "acts of violence of a racial, sexual or otherwise discriminatory nature".

119. See www.agcom.it/documents/10179/13511391/Delibera+157-19-CONS/568d8b16-6cb6-4ea1-b58c-c171c2e24367.

Providers must set up efficient systems to detect and report illegal content. They must disclose a quarterly report about their supervision on hate speech. The supervision authority may impose financial sanctions. AGCOM supervises forms of incitement to hatred.

All users should have equal and impartial access to online platforms during electoral campaigns, and guidelines on such access were applied during the 2018 General Election (Linee guida per la parità di accesso alle piattaforme online durante la campagna elettorale per le elezioni politiche 2018). The improper use of the private data of voters was flagged by a warning which drew attention to the risks.¹²⁰

1.6.8. Lithuania

Pursuant to Article 19 of the 1996 Act on the Access of Information to the Public, it is prohibited to disseminate information which slanders, insults or attacks someone's dignity. The victim may request prosecution and the Broadcast Authority may impose sanctions like the withdrawal of broadcasting licences.

1.6.9. United Kingdom

1.6.9.1. Legislative action

Law on these matters is governed by several texts.

► 1.6.9.1.1. Hate crime

The law recognises five types of hate crime on the basis of race, religion, disability, sexual orientation and transgender identity.

Any crime can be prosecuted as a hate crime if the offender has either: demonstrated hostility based on race, religion, disability, sexual orientation or transgender identity; or been motivated by hostility based on race, religion, disability, sexual orientation or transgender identity. These crimes are covered by the legislation (Crime and Disorder Act 1998 and section 66 of the Sentencing Act 2020), which allows prosecutors to apply for an uplift in sentence for those convicted of a hate crime.

The police and the Crown Prosecution Service have agreed the following definition for identifying and flagging hate crimes:

Any criminal offence which is perceived by the victim or any other person, to be motivated by hostility or prejudice, based on a person's disability or perceived disability; race or perceived race; or religion or perceived religion; or sexual orientation or perceived sexual orientation or transgender identity or perceived transgender identity.

► 1.6.9.1.2. Undue influence

Another approach is the notion of undue influence, which is a classic electoral offence and which is defined in Section 115 of the 1983 Representation of the People Act.

(1) A person shall be guilty of a corrupt practice if he is guilty of undue influence.

(2) A person shall be guilty of undue influence

(a) if he, directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel that person to vote or refrain from voting, or on account of that person having voted or refrained from voting; or

(b) if, by abduction, duress or any fraudulent device or contrivance, he impedes or prevents the free exercise of the franchise of an elector or proxy for an elector, or so compels, induces or prevails upon an elector or proxy for an elector either to vote or to refrain from voting.

In practice it has been noted that most allegations of undue influence lead to no further action being taken. Only one court case has been initiated in the last eight years. In 2016 the Law Commission recommended that the act on undue influence should be modernised. It said it should be restated as an offence of intimidation, deception and improper pressure on voters.¹²¹ The Committee on Standards in Public Life pleaded for the introduction of a distinct electoral offence which would serve to highlight the

120. *Gazzeta ufficiale* 7 maggio 2019 Provvedimento 18 aprile 2019. Provvedimento in materia di propaganda elettorale e comunicazione politica. (Provvedimento n. 96) 19A02800 (GU Serie Generale n.105 del 07-05-2019).

121. Elections Bill 2021-22, House of Commons Library, 1 September 2021, p. 57.

seriousness of the threat of intimidation of parliamentary candidates to the integrity of public life and of the electoral process.

In the consultation “[Protecting the Debate: Intimidation, Influence, and Information](#)”, the government agreed that the offence should be retained. It stated that it needed clarifying, saying the offence as currently drafted was complex and “difficult to interpret and use”.

► **1.6.9.1.3. Transparency**

As has been said above, one characteristic of the messages disseminated on foreign online platforms is their anonymity. It is the reason why transparency has become one concern in this debate.

Among the various proposals to regulate digital campaigning, the ones which deserve attention were made by the Electoral Commission in 2018 after the Brexit campaign.¹²²

- Introduce legislation to specifically prohibit campaign material spending from overseas;
- Update the law to require any digital campaign material to have an imprint that states who created and funded the campaign;
- Increase transparency by requiring more detailed invoices for digital advertisements from political parties, candidates and third-party campaigners; and
- Increase the investigatory powers of the Electoral Commission and the maximum fines that the commission can levy on campaigners that break the rules.

In February 2019, the House of Commons released a report on Disinformation and Fake News. It underlined the danger of the influence of foreign media on electoral campaigns. It called on Facebook to take action against untransparent administrators of groups that are being used for political campaigns. It pleaded for absolute transparency of online political campaigning, including clear, persistent banners on all paid-for political adverts and videos.

A bill that was tabled in July 2021 to increase transparency and accountability proposed that:

- A new digital imprints regime will require political campaigners to explicitly declare who they are when promoting campaign content online and on whose behalf they are campaigning, so that voters are clear who is trying to influence them.
- Only a UK-based person can spend money campaigning.

► **1.6.9.1.4. New offence of intimidation**

An electoral sanction has been introduced to protect campaigners and candidates from inexcusable intimidatory or abusive behaviour in person and online. In the Elections Bill, Part 1 – Administration and Conduct of Elections, section 7 Undue influence, the following activities fall within undue influence:

- using or threatening to use violence against a person;
- damaging or destroying or threatening to damage or destroy a person’s property;
- damaging or threatening to damage a person’s reputation;
- causing or threatening to cause financial loss to a person;
- causing spiritual injury to, or placing undue spiritual pressure on, a person;
- doing any other act designed to intimidate a person;
- doing any act designed to deceive a person in relation to the administration of an election.

The government proposed that the new offence should apply to candidates and campaigners during a regulated period for a UK Parliamentary election or local elections. It proposed to create the new offence on the basis of intimidatory behaviour by labelling the new offence a corrupt practice.

The debate which took place between the different stakeholders showed different approaches to the severity of the sanction. Electoral offences carry sentences in the normal way, the maximum penalty or indictment for most corrupt practices being a year’s imprisonment or fine or both and for an illegal practice on summary conviction a level 5 fine (£10 000). In addition, people convicted of corrupt and illegal practices are barred from holding office for five (corrupt practice) or three years (illegal practice).

¹²². See www.electoralcommission.org.uk/who-we-are-and-what-we-do/changing-electoral-law/transparent-digital-campaigning.

Certain voting offences also carry the sanction of being disqualified from being registered as an elector or voting for a similar period, but the government considered that removing the right to vote would be disproportionate. The sanction of disqualification shares the same approach as the French one (see 1.6.5.1 above). It has been noted that the new offence complies with the freedom of expression granted by the European Convention on Human Rights. The Committee on Standards in Public Life reported that intimidatory activity online had to be “more than simply offensive, shocking or disturbing”. This draft is at the committee stage of the House of Commons at the moment.

1.6.9.2. Non-legislative actions

The National Security Communications Team (NSCT) deals with communications elements of threats to national security. A Rapid Response Unit was set up in April 2018 by the Cabinet Office to “monitor news and information being shared and engaged with online to identify emerging issues, with speed, accuracy and integrity”. This unit operates within the executive branch of the government and is composed of specialists, data scientists, media and digital experts. It works with the NSCT, especially in times of crisis. It promotes a “fact-based public debate”. A Resist model for government departments was designed in March 2018 to provide strategic response to disinformation.

1.7. Recommendations

Freedom of expression and free elections are interrelated rights. Article 10 of the European Convention on Human Rights implies a duty for governments to promote freedom of expression and to set up an environment that guarantees the expression of pluralism, proper conduct of public debate on questions of public interest and fair electoral competition. But this right to free expression is not absolute and cannot be invoked when discriminatory hate speech violates the fundamental values of the European Convention on Human Rights.

There are several ways to combat hate speech during electoral campaigns:

- ▶ to consider that it is particularly important in the period preceding an election that opinions and information be permitted to circulate freely. Opinions and information pertinent to elections should be regarded as forming part of a debate on questions of public interest, an area in which restrictions of expression should be interpreted narrowly;
- ▶ to consider that it has been the European Court of Human Rights constant approach to require very strong reasons to justify restrictions on political speech or questions of public interest; restrictions on freedom of expression have to be legal, necessary and proportionate to the legitimate aim pursued;
- ▶ to provide a legal definition of hate speech, referring to racial origin, ethnicity, sexual orientation, nationality, public opinion, religion and disability, that constitutes in accordance with international standards an incitement to discrimination, hostility or violence;
- ▶ to consider hate speech in regard to free expression with respect to the jurisprudence of the European Convention on Human Rights, which declares that free expression may not be invoked when fundamental values of the Convention are infringed;
- ▶ to consider that, when balancing political expression and any expression inciting discrimination or violence or containing offending opinions against an individual or a group, the concept of “protection of rights of others” may be invoked and the protection of order concerning discriminatory speech falls under the protection of order, as a legitimate aim within the meaning of Article 10.2 of the European Convention on Human Rights;
- ▶ to distinguish value judgments and facts;
- ▶ to take into account regarding the duties of internet portals the context and contents of the comments, the liability of the author of the comments, the measures taken by the applicants and the conduct of the aggrieved party;
- ▶ to encourage platforms to develop self-regulation, which allows operators to make decisions of suspension or removal of hate speech messages reviewed by the judiciary, in line with the principles of legality, necessity and proportionality;
- ▶ to raise awareness among stakeholders to encourage the build-up of teams inside the political parties and around candidates in charge of the detection of forms of hate speech;
- ▶ to set up an administrative body at national level in charge of the detection of hate speech, especially from foreign sources, which are liable to damage the democratic electoral process;

- ▶ to set up summary judicial proceedings during electoral campaigns to stop hate speech, criminally punishable fake news and other unlawful content on traditional means of communication and on social networks;
- ▶ to allow candidates, political parties and voters who have a legal interest to refer to the relevant court so as to penalise the dissemination of hate speech during an electoral campaign with a summary judicial proceeding to preserve the quality of the public debate;
- ▶ to provide efficient, dissuasive and proportionate financial and penal sanctions, when physical and legal persons are convicted of hate speech that damages the democratic electoral process;
- ▶ to provide efficient, dissuasive and proportionate electoral sanctions, when the offence of hate speech falls within the scope of Article 10.2 of the European Convention on Human Rights, which could lead eventually to the annulment of the election and to the disqualification of the candidate from standing for future elections when the hate speech has had an influence on the outcome of the election;
- ▶ to enforce regulations combining financial influence in the democratic decision-making process with tools of interference, such as hate speech, disinformation and cyberattacks which may be mixed together;
- ▶ to support policy makers' ability to understand and implement cybersecurity measures and privacy policies through a cybersecurity taskforce;
- ▶ to enhance synergies in electoral campaigns between all dimensions of cybersecurity with regard to research, development and deployment to grant free and fair elections.

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Hate speech and election management bodies

Strategies for election management bodies to counter hate speech during electoral campaigns

*Marie-Carin von Gumpfenberg,
former member of the OSCE Mission to Georgia,
Election/Democratisation Expert,
Council of Europe Expert*

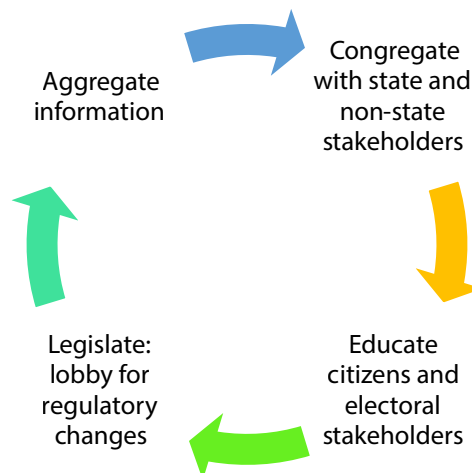
2.1. A systematic approach

The use of hate speech during elections is a dynamic and rapidly evolving issue – especially in online media. Its scope and complexity require a systematic approach. Regulatory solutions might not be available, they might be incomplete or even contradictory, and they might not even be in line with basic human rights and international standards. To effectively counteract hate speech, the Central Election Commission (CEC) is advised to seek primarily for non-regulatory solutions – mainly in collaboration with both state and non-state actors. These solutions are elaborated in sections 2.2 and 2.3: first, how to engage in countering hate speech against election management bodies (EMBs) and then, what solutions are available to minimise hate speech in election campaigns. The presented solutions include regulatory and non-regulatory solutions. They are all key elements of a systematic approach to hate speech.

To effectively counter hate speech, this systematic approach entails the following elements.

- ▶ Aggregate – monitor and document hate speech cases; understand experiences with hate speech and engagement against hate speech; map hate speech mechanisms; adopt instruments to identify and penalise hate speech;
- ▶ Congregate – align with state and non-state actors that could and should have an active role in combating hate speech (such as law-enforcement bodies, ombudsperson, media, civil society actors);
- ▶ Educate – plan and conduct regular training sessions on hate speech (identification, definition, mechanism) and countermeasures against hate speech (e.g. information campaigns); and
- ▶ Legislate – lobby for specific changes to laws and other legal instruments to penalise hate speech.

Figure 1: Systematic approach to counter hate speech



2.2. Engaging against hate speech

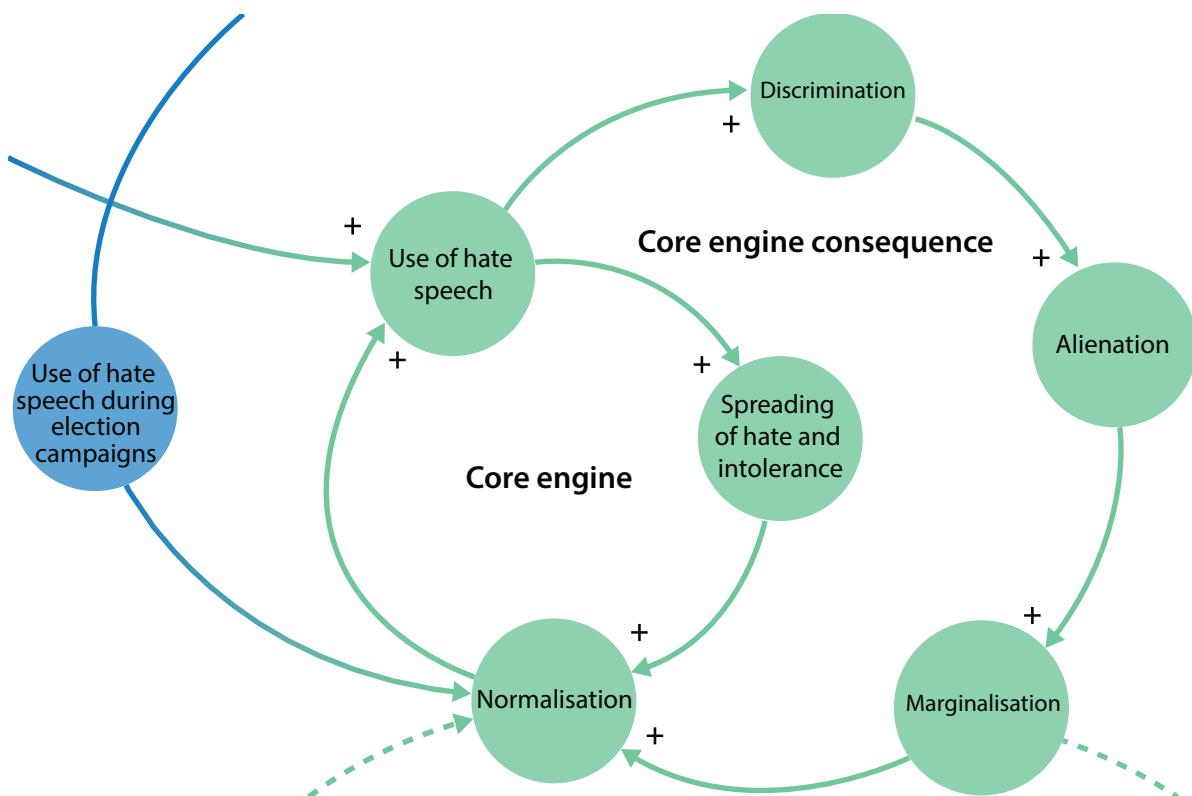
2.2.1. Hate speech mechanisms

“Hate gives rise to hate” – this is the core mechanism of hate speech. The underlying convictions of hate speech are a belief in their own group’s superiority and the other individual’s or group’s inferiority. Hate speech is rooted in intolerance, illiberalism and anti-democratism. Its underlying convictions contradict the Council of Europe’s core principles of non-discrimination and tolerance, which are the basis of a pluralistic democracy, human rights and the rule of law.

2.2.1.1. Biased attitudes

Because biased attitudes are based on the assumption that a person or a group of persons is superior to others, hate speech promotes discrimination. The other person or other group is not treated equally, but differently in a discriminatory way. “Hate speech targets people, as individuals or groups, because of who they are. It alienates, marginalises, and undermines personal dignity, often of those who are already vulnerable in many other ways” (Council of Europe, *Speak peace!*, 2020: 7).

Figure 2: Core engine of hate speech



Source: Council of Europe: Report on the mapping of responses to hate speech in the Republic of Moldova, 2020.

When hate speech convictions are expressed publicly, then they are being spread. Denigration, hatred or vilification of a person or group of people, as well as any harassment, insult, negative stereotyping and stigmatisation, then become part of the public discourse. If they are not being balanced by other views, these sporadic incidences of hate speech transform into shared practice. Hate speech becomes normal, which makes it even harder to identify and to combat.

2.2.1.2. Discrimination

Hate speech does not only spread ideas and convictions of intolerance and illiberalism, but it also often incites to action. Incitement is a very dangerous form of speech, because it explicitly and deliberately aims at triggering discrimination. Hate speech calls upon targeted individuals or groups of people to be treated unjustly in a different way. Discrimination leads to alienation, assuming that there is a low level of integration of the

discriminated individual or group, and that there are no common values with the targeted individual or group. Alienation leads to social exclusion and marginalisation. “Marginalisation is a process in which individuals are blocked from or don’t have full access to various rights, opportunities and resources that are normally available to members of the majority” (Council of Europe, *Speak peace!*, 2020: 17). If no countermeasures are undertaken, social exclusion first becomes more and more part of everyday life and justified, and then normalised.

2.2.1.3. Biased, motivated violence and genocide

Calling for action, hate speech then turns into violence against people and property. Individuals or groups are violently attacked or threatened, even escalating to terrorist attacks or murder. This violence is directed to deliberately damaging property (e.g. the attacked individual’s home/workplace) and/or to desecrate holy places (churches, synagogues, mosques). If an entire people is being annihilated, hate speech gives grounds for genocide.

Figure 3: Hate speech pyramid



Source: Anti-Defamation League, in: www.adl.org/sites/default/files/documents/pyramid-of-hate.pdf.

The pyramid of hate in Figure 3, drawn up by the Anti-Defamation League, shows that biased attitudes and acts of bias are mostly non-criminal incidents, whereas discrimination is an act of civil law. Bias-motivated violence and genocide are criminal offences. This pyramid is useful in understanding the situation in Georgia. Most of the speech in Georgia that is currently of concern to citizens and the public falls in the lower (non-criminal) half of the pyramid.

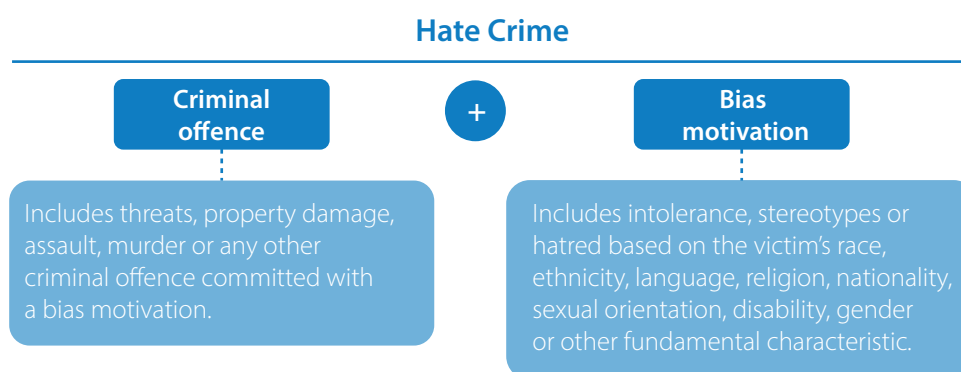
Table 1: Biased attitudes and acts of bias

<p>What are biased attitudes and acts of bias?</p> <p>Below are some examples of biased attitudes.</p> <ul style="list-style-type: none">▶ All red-haired boys are low performers (stereotyping)▶ You are men, you are not competent (sexism)▶ You are fat. I don't want to sit next to you! (body shaming)▶ This person is in bed with other men! (defamation)▶ You are a bitch! (name calling)▶ You are nothing! (slur) <p>These are examples of acts of bias.</p> <ul style="list-style-type: none">▶ People from this region are not our people. F* them! Kill them! (incitement to murder)▶ All ethnic groups – except ours – are our enemies. Keep them away from us! (social exclusion)▶ This religious group – they are all criminals (stigmatisation)
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2.2.2. Hate speech and hate crime

Hate speech statements are public expressions which spread, incite, promote or justify hatred, alienation and discrimination towards a specific individual or group. They contribute to a hostile climate, fuelled by intolerance and hostility. Hate speech becomes a criminal offence when it turns into violence against people and property. "Hate crimes are criminal acts motivated by bias or prejudice towards particular individuals or groups of people. Hate crimes comprise two elements: a criminal offence and a bias motivation" (see "Hate crime reporting" at <https://hatecrime.osce.org/>).

Figure 4: Definition of hate crime



Source: <https://hatecrime.osce.org/>.

A hate crime takes place when a perpetrator or group of perpetrators intentionally targets an individual or a group of people. Hate crime manifests itself in a variety of forms: property damage, arson and vandalism, physical and psychological intimidation, blackmail, aggression, assault and violence, rape and murder. The justification for these violent acts may lie in one or more identity traits of the targeted individual or group and/or in the explicitly expressed hostility towards these identity traits during the crime.

Hate crimes often target politicians: David Amess, a Conservative Member of the British Parliament, was stabbed to death in October 2021. Soon after, a young man was charged with the murder of Amess and the prior preparation of terrorist acts. The young man was tried, convicted and given a whole-life sentence in April 2022. Walter Lübke, a member of the Christian Democratic Party in Germany, heading an institution for the integration of migrants in the *Land* of Hessen, was murdered in June 2019. His murderer received a life sentence in January 2021. In June 2016, Jo Cox, a British Labour Party Member of Parliament, died after being shot and stabbed multiple times in Birstall, West Yorkshire. In November 2016, 53-year-old Thomas Alexander Mair was found guilty of her murder and other offences connected to the killing in an act of terrorism.

Table 2: Hate crime legislation in Germany

Hate crime – A criminal offence in Germany

In Germany, *Volksverhetzung* (“incitement to hatred”) is a punishable offence under Section 130 of the Strafgesetzbuch (Germany’s Criminal Code) and can lead to up to five years’ imprisonment. Section 130 makes it a crime to publicly incite hatred against parts of the population or to call for violent or arbitrary measures against them or to insult, maliciously slur or defame them in a manner violating their (constitutionally protected) human dignity. *Volksverhetzung* is punishable in Germany even if committed abroad and even if committed by non-German citizens (German Criminal Code [Principle of Ubiquity](#), Section 9 §1 Alt. 3 and 4 of the Strafgesetzbuch).

On 30 June 2017, Germany approved the Network Enforcement Act (in German: *Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken*, the *Netzwerkdurchsetzungsgesetz* or NetzDG), aimed at combating hate speech in social networks. In criminalising hate speech, the law states that social networking sites may be fined up to €50 million if they persistently fail to remove illegal content within a week, including defamatory “fake news”.

More: https://en.wikipedia.org/wiki/Hate_speech_laws_by_country#Germany

On 30 March 2021, the Act Combating Right-Wing Extremism and Hate Crime was enacted. This act amended the Criminal Code, the Federal Registration Act and the Network Enforcement Act (NetzDG). The most important changes in the Criminal Code were the following.

- ▶ In addition to racist, xenophobic or other inhumane motives, the perpetrator’s antisemitic motives and goals must also be taken into account when sentencing (Section 46 (2) StGB n.F.).
- ▶ In a case of disturbing the public peace by threatening to commit criminal acts, in addition to the criminal acts already covered, the threat of dangerous bodily harm and serious criminal acts against sexual self-determination (Section 177 (4-8), Section 178 StGB) are also covered (Section 126 (1) nos. 2, 4 StGB n.F.).
- ▶ The criminal act need not have been committed or attempted in a punishable manner. This also covers the treatment of serious offences that have not yet been committed, if this is likely to disturb the public peace. Publicly advocating the statement that someone should be “put up against the wall” is intended by the legislature to be an example of the criminal liability that now exists.
- ▶ If an insult is committed in public, at a meeting, by disseminating content within the meaning of Section 11 (3) of the Criminal Code, or by means of an assault, the range of punishment is up to two years’ imprisonment or a fine (qualification pursuant to Section 185 HS2 of the Criminal Code n.F.).
- ▶ The special protection of persons in political life against slander and defamation “extends to the municipal level” (§188 para. 1 sentence 2 StGB n.F.). Local politicians can also be affected in the same way as politicians at the state or federal level by defamatory statements that are connected with their position in public life and impair them in their public activities.
- ▶ For threatening to commit a crime, the range of punishment was increased from one to up to two years’ imprisonment or a fine (Section 241 (2) StGB n.F.), and for committing the crime in public to up to three years (Section 241 (4) StGB n.F.). Accordingly, even trivial cases such as the threat of an injection are punishable.

Source: https://de.wikipedia.org/wiki/Gesetz_zur_Bek%C3%A4mpfung_des_Rechtsextremismus_und_der_Hasskriminalit%C3%A4t.

Georgia regularly reports hate crime data to the Office for Democratic Institutions and Human Rights (ODIHR). Georgia’s Criminal Code includes general and specific penalty enhancement provisions for hate crimes, as well as substantive offences. The Information-Analytical Department of the Ministry of Internal Affairs (MIA), the Central Administration of Prosecutors of the Ministry of Justice, the Statistical Office and the Supreme Court all collect hate crime statistics. Based on the Memorandum of Co-operation on Collection of Data on Crimes Committed on Grounds of Intolerance with Discrimination Basis and on Publishing a Joint Report, signed in 2020 by the Supreme Court of Georgia, the General Prosecutor’s Office, the MIA and the National Statistics Office of Georgia, a [pilot report on hate crime](#) data was published for the period 1 October to 31 December 2020.

Over recent years Georgia has reported rising numbers of hate crimes, amounting in 2020 to nearly 1 000 cases. This goes along with an increasing number of prosecutions and sentencing.

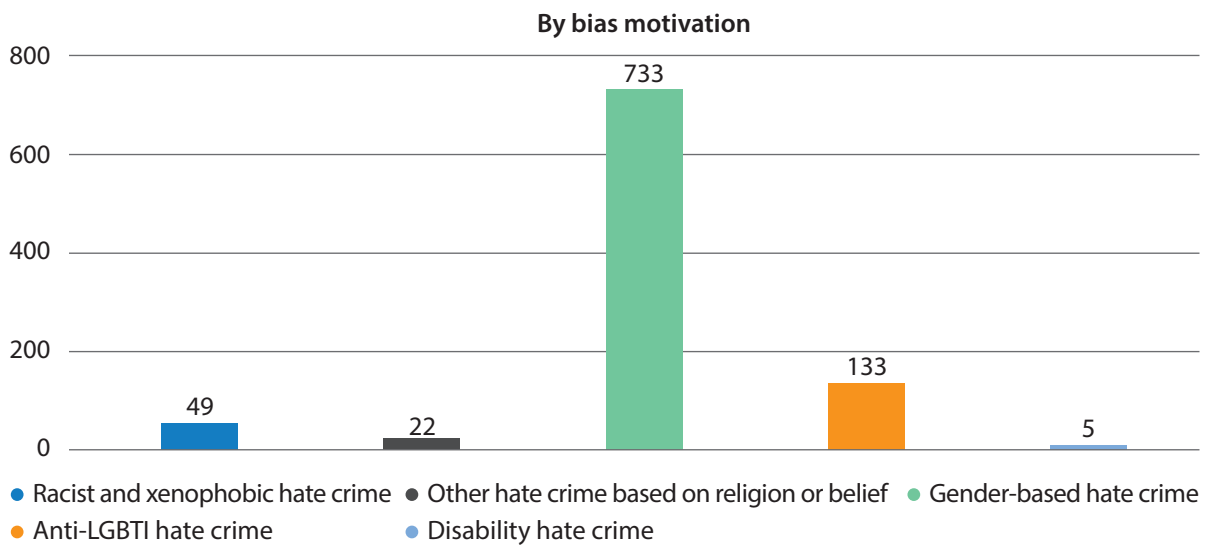
Table 3: Hate crime cases recorded by Georgian police

Year	Hate crimes recorded by police	Prosecuted	Sentenced
2020	989	253	109
2019	775	183	32
2018	344	151	58
2017	86	44	11
2016	47	42	15

Source: <https://hatecrime.osce.org/georgia>.

The overwhelming majority of hate crimes reported to the Georgian police are gender-based crimes (733 of 989 = 74%), followed by anti-LGBTI (133 cases = 13%) and xenophobic (49 cases = 5%) hate crimes.

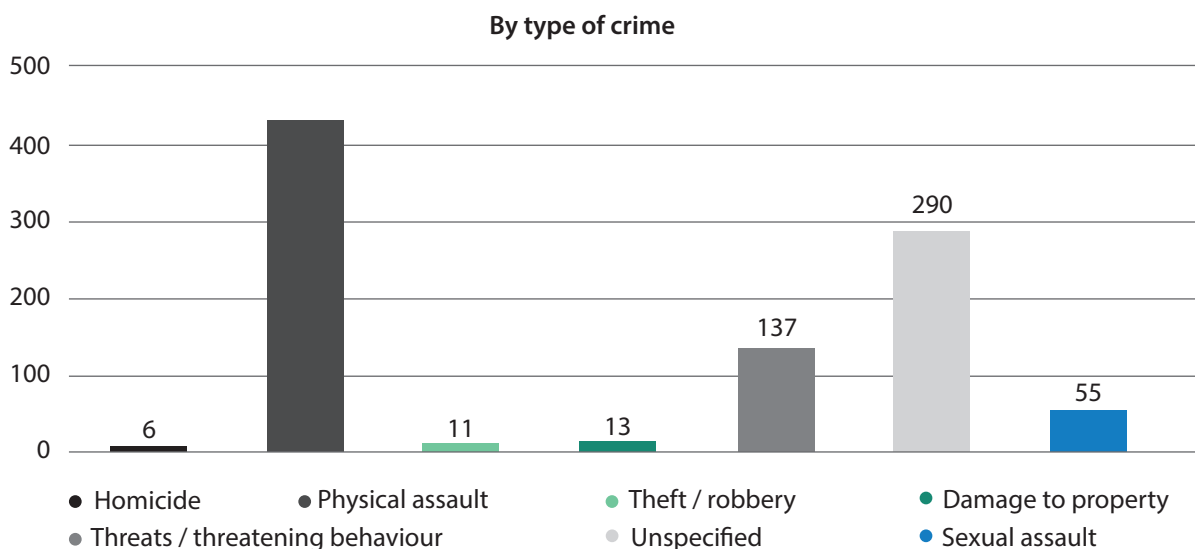
Figure 5: Hate crimes reported to the police: bias motivation



Source: <https://hatecrime.osce.org/georgia>.

The Georgian police report that nearly half of hate crimes are physical assaults (430 out of 989 cases = 43%), followed by threats/threatening behaviour (137 cases = 14%) and sexual assault (55 cases = 6%). There is a high number of unspecified cases (290 cases = 29%).

Figure 6: Hate crimes – By type of crime



Source: <https://hatecrime.osce.org/georgia>.

As official statistics show, hate crime in Georgia is primarily gender-based hate crime, mostly targeting women. So far, it has taken the forms of threatening behaviour, threats or sexual and physical assault. No murder was reported to police.

Table 4: Threshold test for hate crimes

<p>When is hate speech to be regarded as a criminal act?</p> <p>In any test for identifying and outlawing hate speech, the Rabat Plan of Action suggests a high threshold for defining restrictions on freedom of expression or incitement to hatred, and for the application of Article 20 of the International Covenant on Civil and Political Rights. Article 20, paragraph 2 of this covenant states that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. The Rabat Plan of Action outlines a six-part threshold test taking into account:</p> <ol style="list-style-type: none"> 1. the social and political context; 2. status of the speaker; 3. intent to incite the audience against a target group; 4. content and form of the speech; 5. extent of its dissemination; and 6. likelihood of harm, including imminence.

2.2.3. Hate speech and freedom of speech

“There is a fine line between free speech and hate speech. Free speech encourages debate, whereas hate speech incites violence” (Lee 2013). Freedom of expression is a human right, enshrined in Article 10 of the European Convention on Human Rights. Everybody should be free to exercise this universal right. This includes the freedom to express opinion and to receive and disseminate information and ideas. However, “freedom of expression is not a right without limits” (Council of Europe, *Speak peace!*, 2020).

In specific cases prescribed by law, freedom of expression can be limited. This can include cases when speech incites violence against people and property, calls for individuals or groups to be violently attacked or threatened, threatens them with terrorist attacks or murder. The European Convention on Human Rights elaborates these limits (see Table 5) and clearly speaks out for penalising these forms of hate speech.

Table 5: European Convention on Human Rights: Freedom of expression

<p>European Convention on Human Rights, Article 10: Freedom of expression</p> <ol style="list-style-type: none"> 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ... 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The internet is not a neutral place for unlimited freedom of speech. The internet is a platform of information, ideas and opinions; it is also a creator of hate speech, especially during electoral campaigns.

To protect freedom of speech and to counteract hate speech on the internet, a well-thought-through approach is needed. There is no simplistic solution. The internet is a very complex setting with users, platforms, providers and other stakeholders being involved. However, the following are good practices.

- ▶ There should be a nationwide discussion about hate speech on the internet.
- ▶ Legislation should provide consistent guidance on what qualifies as hate speech in general and specifically on the internet, and what is not.

- ▶ Internet platforms should be regulated. Legislation should stipulate which content is allowed, and which content is to be restricted/deleted.¹²³
- ▶ Internet platforms should be required to apply appropriate levels of transparency about the algorithms they use to detect and delete hate speech.
- ▶ Producers of hate speech content should be penalised; their hate speech content should be removed/ deleted with immediate effect.
- ▶ Monitors should use existing technologies (e.g. search engines) to identify hate speech content online, document their findings, make their conclusions public and lobby for the implementation of their recommendations.

These measures are only effective if they are not only focusing on the supply side (i.e. tracking down content and removing it), but also focusing on the demand side (i.e. educating citizens). The root causes of hate speech (lack of trust/fear) are to be addressed; extensive information literacy programmes are to be implemented; every single citizen should continually be made aware of how to access, critically evaluate and responsibly create media content; a thoughtful and resilient society has to be built up that identifies, stands up against hate speech and takes countermeasures.



Source: Council of Europe, www.coe.int/en/web/freedom-expression/hate-speech.

2.3. Hate speech against election management bodies – Strategies to counteract hate speech effectively

2.3.1. Document, monitor and publish information on hate speech against EMBs

To get a better understanding of hate speech against EMBs, the CEC should encourage such bodies at all levels to report on hate speech incidents. A first quick enquiry among EMBs at central, territorial and district level could centre around the following questions.

- ▶ Did you personally face any hate speech in your professional life, i.e. as a representative of the election commission?
- ▶ Do you know of any instances of hate speech against other members of the election commission?

¹²³ See the example of Germany, where internet platforms have to delete hate speech content within 24 hours, at www.dw.com/en/facebook-zuckerberg-to-stamp-out-hate-speech-in-germany/a-19078185.

- ▶ If so, please analyse these instances.
 - At which level of the election commission (precinct, district or central, i.e. PEC, DEC or CEC) did you observe hate speech?
 - What were the underlying beliefs/attitudes of this hate speech (extremist ideology, racial hatred, xenophobia, religious intolerance, sexism, other)?
 - Which forms of hate speech (e.g. harassment, insult, negative stereotyping, stigmatisation, threat, discrimination, physical attack, murder) did you observe?

This kind of brief update should be conducted in a constructive and open manner. In order to create a common understanding, the CEC should provide the EMBs with the national definition of hate speech and should also refer to the Council of Europe definition of hate speech. The brief enquiry should explicitly mention, not only include, physical threats and attacks in person, but also hate speech incidents in social media directed towards EMBs. Data collected in this way could provide the type of preliminary information on hate speech and hate crimes against EMBs as shown in Table 6.

Table 6: Hate speech incidents against EMBs – Examples

Assessment of hate speech against EMBs – Possible results
<ul style="list-style-type: none"> ▶ initiators of the hate speech: political party representatives in the EMBs, other political party representatives and journalists; ▶ forms of hate speech: harassment, insult (“bought by a political opponent”), negative stereotyping, stigmatisation, individual threats (“go to prison”); physical attack (destruction of a car of one EMB) and protest actions in front of the CEC (“tear down the CEC building”); no murder; ▶ intent: discrediting the work of the CEC (especially the CEC chair and CEC communication department) and/or TECs (territorial electoral commissions) and DEC; ▶ wide outreach as published in social media (caricatures, insulting photos and speeches, video clips discrediting CEC or certain EMBs); ▶ likelihood of violence: medium (there was incitement to violence, but no violent attacks); ▶ position of the person/group of persons attacked by hate speech: CEC members (high profile during election campaign) and DEC members (especially during parliamentary and local elections); ▶ context: heated election campaign, polarised context.

The CEC should systematically collect data on hate speech against EMBs. This should be done as follows.

The CEC provides the EMBs with (1) CEC’s/national definition of hate; (2) information about a focal point for reporting hate speech in the CEC; (3) an instruction how to register hate speech incidents; and (4) a template document to report cases. This information is accompanied by a short training unit on identification, categorisation and recording of hate speech.

Once the CEC receives information on hate speech incidents, these incidents should be recorded and properly documented. If collected regularly and systematically, robust statistics on hate speech incidents and hate crimes will then be available within the CEC. These statistics should include reliable data in sufficient detail (e.g. numbers of cases reported to CEC and law enforcement agencies, the numbers prosecuted and the sentences imposed).

The statistics could be discussed in CEC working sessions. The outcomes of these sessions might vary depending on the issue, from broad recommendations on ways to improve hate speech recording, documentation and reporting to concrete actions to be taken up by EMBs (see following sections of this toolkit). Based on these statistics the CEC can draw lessons learned for further action on how to improve monitoring and reporting.

2.3.2. Speak out against hate speech

Addressing hate speech at a very early stage of its occurrence keeps hate speech from escalating into more dangerous forms, particularly incitement to hostility and violence. With this in mind, the CEC should publicly speak out against discrimination and hatred at the very start of any hate speech campaign. These kinds of statement have been proven to put hate speech discourses to an early end.

The CEC statements should focus on their own institutional integrity and the integrity of the election campaign. Besides, the CEC should inform the public about the differences between criticism, disinformation and hate

speech. They should name hate speech incidents against EMBs and condemn any further acts of hate speech directed towards EMBs, whether this be harassment, insult, negative stereotyping, stigmatisation or verbal and physical threats and violent attacks.

2.3.3. Engage with prominent stakeholders against hate speech

The EMBs should encourage a pluralistic public dialogue on hate speech, which may be in the digital or electronic media or in public meetings. The CEC, TECs and DEC members should be present at public forums, such as televised candidate debates, town hall meetings and roundtable discussions, that are designed to promote issue-based discussions. There they should stand up against hate speech directed towards EMBs and provide an insight into the negative consequences, such as:

- ▶ for the targeted individuals: Targeted EMB members are subject to verbal assaults and physical attacks. They fear for their personal security. Some might even need to receive physical protection; others might feel forced to resign.
- ▶ for the targeted institutions: Persons working for EMBs feel insecure. They might consider not coming to work in case their office building is attacked by protesters. The EMBs might become dysfunctional due to the no-show of intimidated members.
- ▶ for the campaign environment: EMBs are discredited; their professionalism is questioned; their information about the election results is challenged, which might further endanger democratic processes.

Wherever EMBs take part in public debates, they should align with other institutions or organisations. These may be the Ombudsperson who documents cases of discrimination, other state institutions (e.g. police) or even civil society actors with a focus on anti-discrimination, women’s rights and freedom of speech.

2.3.4. Mitigate hate speech risks for EMBs

The collected data on hate speech against EMBs (see 2.3.1 above) could be used for an assessment of security risks that EMBs face during the election campaigns. Hate speech incidents might be highly likely; their frequency may not be so high, but their consequences could be devastating. An overview of hate speech risk could look like the summary in Table 7.

Table 7: Risk assessment – Hate speech against EMBs

<i>Who</i>	<i>What</i>	<i>When</i>	<i>How likely</i>	<i>Which damage</i>	<i>How to prevent</i>
CEC chairperson	Possible protest actions in front of the CEC building; social media posts piling in against CEC chair (“shitstorm”)	From the start of the election campaign until tabulation of results – with increasing frequency	High	Damage to reputation, to property and to the physical, mental and psychological health of CEC employees	Running a well-targeted information campaign, openly speaking out against hate speech
DEC	Protest actions in front of the DEC building and the private houses of DEC members; destroying the cars of DEC members	From casting of votes until tabulation of the results	High in named region	See above	CEC providing required support to DEC, DEC seeking assistance from local law-enforcement authorities

Based on the risk assessment, the CEC should put in place a risk-mitigation strategy combined with a security plan that could include the following elements:

- ▶ outline of the overall goal of the risk-mitigation strategy (promoting transparency and trust);
- ▶ brief Code of Conduct for EMBs (e.g. no to hate speech, no to corruption, commitment to integrity of elections);
- ▶ risk analysis;
- ▶ a crisis communication playbook (outlining for example who is representing the EMBs, what wording or language to use, what to say to counter hate speech against EMBs);
- ▶ overview of a set of preventive and reactive actions of the EMBs (e.g. information campaigns, strong statements);

- ▶ reactive actions of other stakeholders, such as the ombudsperson (e.g. monitoring, documenting and reporting on cases), the police (conflict prevention/de-escalation and investigation) and other state institutions (e.g. involved in adjudicating cases);
- ▶ list of institutions to be consulted (e.g. women's organisations if female EMB employees are targeted);
- ▶ security instructions for EMBs.

2.3.5. Assist victims and adjudicate cases

The CEC should assist EMBs that have become victims of hate speech. Victims should be able to get in contact with the CEC focal point on hate speech to report the hate speech incidents and hate crimes. The CEC should provide victims with access to psychosocial counselling, legal assistance and effective access to justice (if this approach is deemed appropriate). It might be of the utmost importance to provide a safe space for the victims, so they feel secure.

If deemed appropriate, the CEC could seek for ways to effectively prosecute hate speech offenders. All legal means should be exhausted, so hate speech is legally recognised and captured as a separate category of crime, and dedicated investigation, prosecution and sentencing according to existing legislation should be enabled.

If the CEC engages in adjudicating hate speech cases, they should be aware of the potential pitfalls encountered by other judicial and administrative bodies. These include slow adjudication, broad interpretation, inconsistent jurisprudence, political bias, legal overreach and abuse, disproportionate penalties and non-compliance with international obligations. In these cases, the assistance to victims of hate speech should be given priority.

2.3.6. Introduce and promote a Code of Conduct for EMBs

In order not to allow hate speech to be raised within or against EMBs, the EMBs should be encouraged to commit themselves to model good behaviour. In order to promote integrity standards, the CEC should draft a Code of Conduct that also includes paragraphs about hate speech. The Code of Conduct could include the text on hate speech shown in Table 8.

Table 8: Elements of a Code of Conduct for EMBs

Elements of an EMB Code of Conduct
Hate speech includes all forms of expressions that spread, incite, promote or justify any hatred based on intolerance. EMBs are not allowed to promote incitement to violence or hateful conduct. EMBs are committed to counter-narratives, promoting non-discrimination, tolerance and respect, including through awareness-raising activities.
The CEC has in place processes to review notifications regarding hate speech against EMBs. Any issues can be brought up at the hate speech focal point in the CEC. The CEC educates and raises awareness about the integrity of the EMBs.

The Code of Conduct could also explicitly list conduct by EMBs that is prohibited:

- ▶ Use of language which incites hatred and provokes violence
- ▶ Intimidation of candidates, voters, state authorities
- ▶ Publishing false information about candidates or parties, electoral procedures or election results
- ▶ Bribing or being bribed
- ▶ Generally abusing a position of power, privilege or influence to influence the outcome of an election.

The introduction of a new Code of Conduct for EMBs or adding new elements to the existing Code of Conduct should go along with training. In these training sessions, EMBs' awareness about hate speech should be increased, and specific election-related hate speech content should be taken up (such as slander, slur, assault, sexism, toxic language). Further on in these sessions, EMBs should be provided with sufficient information about what the Code of Conduct aims at, what is hate speech, how to react to it and what penalties might be applied in cases of breach of the Code of Conduct.

This training should be embedded into a broader training programme for EMBs. It should include topics such as the country's obligations under national law and international standards on hate speech (e.g. human rights, voting rights, non-discrimination, gender equality, freedom of speech and hate speech). The training programme could also spell out the mechanisms and consequences of hate speech and incitement of hatred.

Table 9: Training of EMBs on hate speech

Training of EMBs on hate speech – Changing perspectives in a role play

Training of EMBs could include a role play that sets out a typical scenario of a hate speech attack against an election official. The participants could be given the following roles: the hate speaker, the hate speech victim (a DEC representative), another DEC representative, a CEC representative and a police representative. Each “actor” should be given a minimal script; they could then freely interpret their respective roles. Non-participating EMB members observe the role play.

After the role play, first the “actors” explain how they felt in their respective roles and what they would or should have done differently. The observing EMB members are then also invited to comment. Further on, a facilitator should explain the positions each “actor” should have taken according to the CEC rules and regulations; reporting guidelines should be explained, and possible counteractions outlined.

Such a role play tests the participant’s leadership skills when confronted with escalating hate speech and related violence directed towards EMBs. During post-role play debriefings, EMB members may state for example that for the first time they had the opportunity to view hate speech cases through the eyes of other stakeholders. This role play may also prove to be a transformative experience. EMB members may further understand the importance of co-operating with other stakeholders and establishing relationships before a crisis occurs – especially when the CEC lacks a mandate to act.

2.3.7. Raise awareness and educate voters

The CEC should include hate speech against EMBs in their strategy for public information campaigns and voter education programmes. By providing timely, fact-based and accurate information, the CEC can dispel allegations about EMBs’ wrongdoing and misconceptions of their roles and duties. Such efforts can help voters in identifying and addressing intolerance, while recognising and resisting hate speech instigated by officials, candidates and their supporters and the media against EMBs.

When implementing its public information campaign, the CEC should design its public information and voter education products in such a way that all content, whether text or images, is conflict- and gender-sensitive. The CEC should distribute all products to a wide range of civil society organisations, media outlets and educational institutions in official and minority languages. It should choose the appropriate channels to reach out to the relevant target audience (maybe using electronic or social media).

2.3.8. Protect EMBs against hate speech in the legal framework

Hate speech against EMBs is seldom regulated in the Election Code. The CEC should review the existing Election Code to see whether it contains the following elements:

- ▶ Prohibition of EMBs instigating hate speech and inciting discrimination
- ▶ Requirement of EMBs to operate in an independent, impartial and transparent manner
- ▶ List of penalties applied against EMBs if they engage in hate speech.

At a further stage, the CEC should review whether its internal regulations contain any of the following elements:

- ▶ Definition of hate speech and hate speech risks
- ▶ Need for all EMBs to sign a Code of Conduct that contains mention of hate speech
- ▶ Need of all EMBs to be sufficiently trained on hate speech
- ▶ Information about penalties applied to EMBs for instigation of hate speech
- ▶ Information about the consultative position within the CEC on hate speech issues
- ▶ Information about the need to document and report hate speech cases
- ▶ Information about other authorities to be consulted/included in hate speech cases.

2.3.9. Analyse the impact of CEC activities on countering hate speech

The CEC should make a critical self-assessment of its activities on countering hate speech:

- ▶ Have EMBs been sufficiently trained? Have they all understood what hate speech is, its forms and mechanisms?
- ▶ Do EMBs stick to the Code of Conduct? Do EMBs refrain from hate speech? How many hate speech incidents instigated by EMBs were reported?

- ▶ How often did the CEC leadership speak out in favour of tolerance and non-discrimination? Internally and externally?
- ▶ Was the integrity focal point consulted by EMBs? If so, how often? Which other channels were used for consulting and reporting on hate speech?
- ▶ In what way did the CEC assist EMBs being victims of hate speech?
- ▶ Which voter education campaign was successful? Did the chosen activities address the right audience? Was content taken up? Could hate speech campaigns against EMBs be prevented and/or stopped? Has the CEC gained a profile as an independent institution?
- ▶ Did the CEC lobby for necessary legislative changes? If so, was the CEC successful?

2.4. Hate speech in electoral campaigns – Strategies for election management bodies

2.4.1. Document, monitor and publish hate speech incidents during electoral campaigns

To get a quick insight into the occurrence, frequency and extent of hate speech during election campaigns, the CEC could study existing publications of media monitoring organisations. In addition, the CEC could encourage EMBs at all levels to report on hate speech incidents in electoral campaigns (in addition to reporting incidents directed against EMBs). This non-representative CEC survey could include the following questions:

- ▶ What hate speech incidents did you observe during the election campaign?
- ▶ In which phases of the electoral campaign was hate speech especially predominant (at the beginning, in the course of it or towards the end of the election campaign, during the vote counting or tabulation of results)?
- ▶ Which forms of hate speech did you observe (e.g. harassment, insult, negative stereotyping, stigmatisation, threat, discrimination, physical attack, murder)?
- ▶ Against whom was the hate speech directed (e.g. candidates, political parties, media, civil society) and on what grounds (e.g. male/female/LGBTI; young/old; Georgians/non-Georgians; Georgian orthodox/other religion)?
- ▶ What impact did the hate speech have on the election campaign (e.g. dominating public discourse for some time, not allowing candidates/political parties to present their electoral programmes, intimidating other electoral stakeholders and/or voters, interrupting the voting and/or counting process)?
- ▶ In what way did the very nature of elections have an impact on the occurrence and forms of hate speech? Were there more incidents during presidential than parliamentary and local elections? Was hate speech directed only against a limited number of presidential candidates or a number of regionally rooted candidates? Which level did hate speech reach in the respective elections?

This quick non-representative survey among EMBs, and even more the representative monitoring data collected by professional media watchdogs, could shed a light on the way speech impacts election campaigns and to what extent. Table 10 contains an example of such a quick non-representative assessment of hate speech during elections and what it could look like. It should be complemented by further in-depth research, conducted either by the CEC itself or a competent body.

Table 10: Analysis of hate speech risks in electoral campaigns

<ul style="list-style-type: none"> ▶ Timing: predominantly towards and around the election day ▶ Forms of hate speech: <ul style="list-style-type: none"> – high competition between political party representatives in insulting competitors – showing discrediting video films briefly before the election day – political party targeted because of LGBTI candidate – showing banners with hate speech (which was withdrawn) – no murder because of hate speech, but threats of murder ▶ Intent: discredit/degrade/humiliate competitors, media representatives, civil society actors ▶ Key actors: political party representatives ▶ Outreach: broad media coverage of the hate speech cases – especially on the internet ▶ Consequences of hate speech <ul style="list-style-type: none"> – for the targeted individuals: humiliation, degradation, shame – for the targeted institutions: no focus on political programmes, but on personalities – for campaign environment: toxic environment.

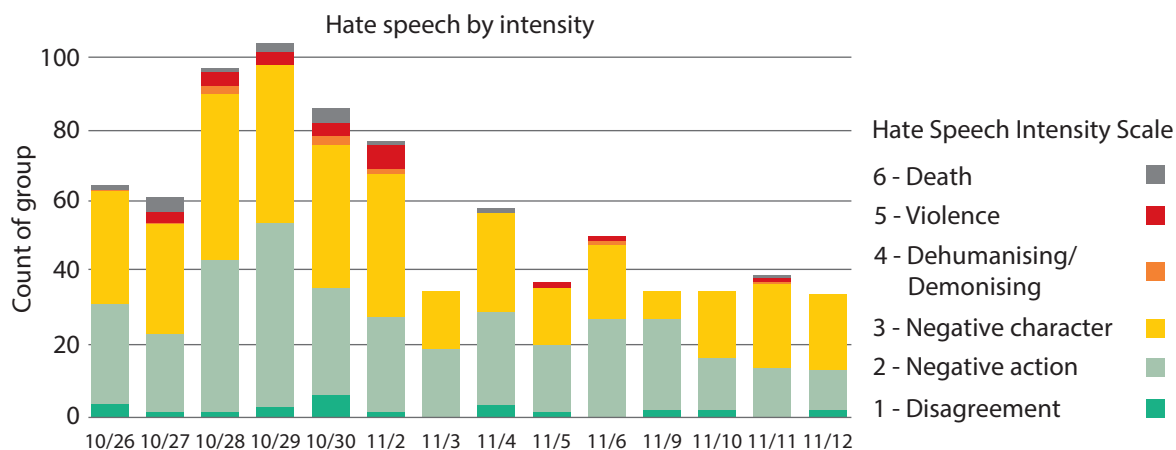
2.4.2. Encourage professional monitoring on hate speech

To get a better understanding of the use, scope and impact of hate speech in electoral campaigns, the CEC should align with respected institutions that have a proven track record in monitoring hate speech during electoral campaigns (e.g. election watchdogs, media monitoring civil society actors, national regulator, national broadcasting, internet providers, media owners/companies and social media networks/platforms). Any hate speech monitoring should look beyond the content of hate speech and take into account the context, the status of the speaker and the potential consequences of the speech act. The monitoring institution should:

- ▶ come up with a definition of hate speech in relation to the electoral context;
- ▶ monitor hate speech incidents, not only directed at candidates and political parties, but also directed at non-state actors such as individuals/influencers, media, civic society actors and non-formal groups, and paying special attention to women being targeted by hate speech;
- ▶ identify features characteristic of hate speech messages such as (1) calls to violent action; (2) a threat of violence or the promotion of violent action; (3) calls to discriminate or to promote discrimination; (4) attempts to degrade human dignity based on their characteristics; and (5) contempt, solicitation, name calling or slandering;
- ▶ examine the context of specific hate speech to evaluate the publicity attracted by the message (posters/billboards being visible only in one place or all over the country; a message thread being shared in relevant social media numerous times);
- ▶ focus not only on traditional media (newspapers and TV/talk shows), but especially election campaigning on the internet conducted by political parties, their candidates and supporters as well as by opinion leaders or influencers.

The results of monitoring should be published (e.g. as in Figure 7). The monitoring institutions should point the finger at specific cases and not be shy of naming and shaming the most prominent hate speakers. Further, monitoring should draw conclusions (such as “there are more hate speech cases during presidential elections than during parliamentary election” or “women are more targeted in parliamentary and local elections”) and come up with concrete recommendations (such as regulatory authorities taking up specific cases).

Figure 7: 2020 Presidential elections – Hate speech on Twitter – monitoring results



Source: <https://mediapeaceproject.smpa.gwu.edu/monitoring-hate-speech-during-the-2020-election-2/> (accessed 31 August 2022).

Results of a 2020 NDI survey among the Georgian population show that the overwhelming majority of the population is interested in fact-based, programme-oriented electoral campaigns, and not in slurs, insults, hate speech incitement and open discrimination. Results of the media monitoring on hate speech, however, often show, that a minority of election stakeholders attract most of the media attention during the electoral campaign. The key question here is how to bring the majority of election stakeholders back into the discourse, so they can determine the media agenda and not those who are propagating hate speech. Here thorough research is required – especially in order to understand what counter strategies could be effective in this highly sensitive context of electoral campaigns.

Below and in the following sections, there are excerpts from Recommendation No. 15 of the ECRI. They are directed towards different state bodies, but elements may provide the CEC with ideas of further steps that could be taken against hate speech.

Table 11: ECRI General Policy Recommendation No. 15 on Combating Hate Speech: monitoring hate speech

<p>Monitoring hate speech</p> <p>Government officials are recommended to engage in monitoring hate speech and should:</p> <ul style="list-style-type: none"> ▶ ensure that the gathering of data on hate speech is not limited to the criminal justice sector; ▶ ensure that the data gathered are appropriately disaggregated; ▶ support the monitoring of hate speech by civil society, equality bodies and national human rights institutions and promote co-operation in undertaking this task between them and public authorities; ▶ support research that seeks to analyse the conditions conducive to the use of hate speech and its forms; ▶ disseminate, on a regular basis, data about the incidence of hate speech, as well as its forms and the conditions conducive to its use, both to the relevant public authorities and to the public; and ▶ draw on the results of the monitoring and the research to develop strategies to tackle the use of hate speech.

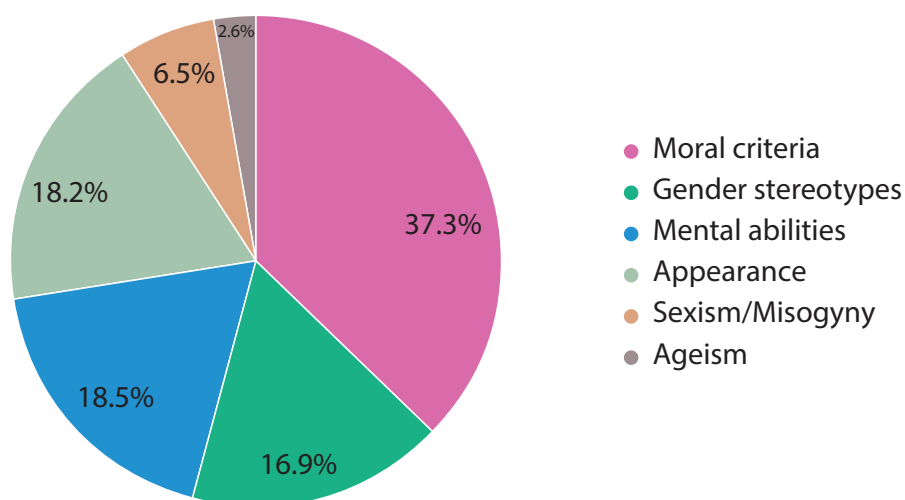
2.4.3. Stand up against hate speech – Especially when women are being targeted

The CEC should – together with other state institutions and civil society actors – publicly stand up against hate speech during electoral campaigns, especially if women are predominantly being targeted. This may affect female candidates, female journalists or female civil society representatives. Hate speakers threaten women because of their sex, their appearance, their age, their mental abilities or their sexual behaviour. Sexism is observed not only on billboards, but also on talk shows and in online media. Sexist hate speech often turns into hate crime, as the ODIHR hate crime statistics for Georgia show (2.2.2 above).

Sexism is a product of culture, a certain set of beliefs about, or expectations of, what constitutes appropriate behaviour, appearance or behaviour of a women. Sexism discriminates against women and disseminates prejudices or stereotypes about women, based on sexual characteristics or perceived sexual characteristics. For the 2020 elections, UNDP documented the following sexism in the Georgian electoral campaign:

1. Misogyny/sexism – Attacking women, in general, and women’s rights
2. Offence/ridicule on the ground of appearance – Offending and ridiculing on the ground of body, appearance, manner of talk, clothing
3. Ageism – Discriminating on the ground of age
4. Offence/ridicule on the ground of mental abilities – Disparaging intellectual capacity, skills, experience, competences
5. Attacks based on moral criteria – Attacking on the ground of moral values
6. Criticism on the ground of gender stereotypes – Attacking on the basis of stereotyped perceptions of women’s role, behaviour, function, activity or other traits.

Figure 8: Hate speech in social media against women during Georgian 2020 elections



Source: UNDP Georgia: Election media monitoring: sexism and gender stereotypes on social media, 2020.

Table 12 provides an overview of how sexism in electoral campaigns could be recognised.

Table 12: How to recognise hate speech directed against women during election campaigns

How to recognise sexism in electoral campaigns

Hate speech targets women in the following ways:

- ▶ style over substance: does the female candidate satisfy social expectations of beauty?
- ▶ stereotype female behaviour: female candidates are viewed more as caring;
- ▶ female competences: female candidates are regarded as less qualified for holding office as opposed to male candidates;
- ▶ family status: for men, the question of how they manage to combine career and family rarely arises in the media;
- ▶ sexual behaviour: men are allowed to have sexual relationships outside marriage; women are not allowed.

The CEC – together with other state institutions and civil society actors – should clearly speak out against sexism in electoral campaigns. Public statements could include the following elements.

- ▶ Encourage women and witnesses to publicly speak about hate speech in electoral campaigns. Until now, hate speech has remained largely invisible simply because many victims do not know how best to react. A public debate about sexism in electoral campaigns from the victims' point of view can direct attention away from the hate speech content towards the underlying culturally set concept of "womanliness".
- ▶ Name and shame hate speakers: hate speech often remains uncontested, as the perpetrators are not being publicly targeted. Generally, media attention is on the women, exposed by hate speech. Going to the hate speakers and confronting them with their hate speech texts may be also a way to make them revoke their sexist statements.
- ▶ Call for an end to impunity in hate speech on the internet. Impunity in using hate speech can be tackled by calling upon internet media to carefully monitor and evaluate their newsrooms and to timely withdraw hate speech content.
- ▶ Encourage the establishment of well-functioning victim-support systems: persons targeted by hate speech often neither receive psychosocial support nor enjoy full access to justice. Working closely with civil society organisations, which often offer the most specialised and direct support to those who have become the target of hate crime, can be beneficial.

2.4.4. Engage with government stakeholders against hate speech to follow up on hate speech cases

The CEC should seek close co-operation with key government bodies (police, the prosecutor's office, courts, victim-support structures, relevant ministries, equality bodies) in applying for the following countermeasures:

- ▶ de-escalating violent incidents;
- ▶ investigating, prosecuting or adjudicating cases;
- ▶ supporting hate speech victims;
- ▶ formulating hate speech policies or laws that span the competencies of multiple ministries;
- ▶ adjudicating hate speech cases.

The recommendations by the ECRI in Table 13 go beyond the competencies of EMBs; however, they are included here to show the scope of countermeasures that government stakeholders can take to effectively combat hate speech.

Table 13: ECRI General Policy Recommendation No. 15 on Combating Hate Speech: effective action against hate speech

Effective action against hate speech

Government officials, in order to take appropriate and effective action against the use, in a public context, of hate speech which is intended to, or can reasonably be expected to, incite acts of violence, intimidation, hostility or discrimination, should do the following:

- ▶ provide penalties for these offences that take account both of the serious consequences of hate speech and the need for a proportionate response;

- ▶ monitor the effectiveness of the investigation of complaints and the prosecution of offenders with a view to enhancing both of these;
- ▶ ensure effective co-operation/co-ordination between police and prosecution authorities;
- ▶ provide appropriate training for, and facilitate exchange of good practices by law enforcement officers, prosecutors and judges who deal with cases involving hate speech; and
- ▶ co-operate with other states in tackling the transfrontier dissemination of hate speech, whether in a physical or electronic format;
- ▶ ensure that the offences are clearly defined and take due account of the need for a criminal penalty to be applied;
- ▶ ensure that the scope of these offences is defined in a manner that permits their application to keep pace with technological developments;
- ▶ ensure that prosecutions for these offences are brought on a non-discriminatory basis and are not used in order to suppress criticism of official policies, political opposition or religious beliefs;
- ▶ ensure the effective participation of those targeted by hate speech in the relevant proceedings;
- ▶ provide penalties for these offences that take account both of the serious consequences of hate speech and the need for a proportionate response.

2.4.5. Carefully design your own media outreach strategy

When designing their media outreach strategy well in advance of elections, the CEC should dedicate special attention to countering hate speech. This communication strategy should elaborate which pre-emptive actions the CEC could take at which point of the election campaign to prevent hate speech. These pre-emptive actions should be combined with other proactive, reactive or co-ordinated responses from other election stakeholders, to form a comprehensive and inclusive approach to improving the integrity of the information environment around elections.

Throughout their media outreach strategy, the CEC should be (1) sensitive in their messaging, not instigating any hate speech in their media outreach; (2) credible in their messaging, focusing on objective, fact-based information; (3) focused in their messaging, not getting lost in distracting, problematic and misleading messages; (4) effective in their messaging, trying to ensure that their messages are reaching the right audiences in ways that resonate with them (e.g. using the appropriate social media channels).

Besides proactively embedding counter-hate speech messaging in the CEC's larger communication strategy, the CEC should produce specific content aimed at countering hate speech. This may be video clips against hate speech or billboards with prominent people's clear and brief statements against hate speech. In addition, the CEC should react to hate speech through targeted information campaigns. Preference should be given here to social media where CEC can reach audiences susceptible to or likely to be targeted by hate speech, such as women, people with disabilities and people with lower levels of education. The balance or combination of these embedded and specifically targeted measures is likely to vary from one election to the next. Presidential elections with a focus on few candidates, campaigning nationwide, might require different measures than parliamentary and local elections with decentralised campaigning all over the country.

The CEC should regard their outreach campaign as a long-term process to educate electoral stakeholders and citizens. Civic literacy levels should be raised; the public's vulnerability to hate speech and calls to violence can be reduced over a long time.

In Table 14 the recommendations by the ECRI outline good practices that government officials can apply to raise awareness about hate speech and to publicly react to hate speech.

Table 14: ECRI General Policy Recommendation No. 15 on Combating Hate Speech: civic education

Civic education

Government officials can raise awareness about and stand up against hate speech if they:

- ▶ promote a better understanding of the need for diversity and dialogue within a framework of democracy, human rights and the rule of law;
- ▶ promote and exemplify mutual respect and understanding within society;
- ▶ facilitate and exemplify intercultural dialogue;
- ▶ combat misinformation, negative stereotyping and stigmatisation;

- ▶ develop specific educational programmes for children, young persons, public officials and the general public, and strengthen the competence of teachers and educators to deliver them;
- ▶ support non-governmental organisations, equality bodies and national human rights institutions working to combat hate speech;
- ▶ encourage speedy reactions by public figures, and in particular by politicians and religious or community leaders, to hate speech that not only condemn it but also seek to reinforce the values that it threatens; and
- ▶ encourage perpetrators to renounce and repudiate the use of hate speech and help them to leave groups that use it.

2.4.6. Introduce and monitor the implementation of a Code of Conduct for Political Parties – and punish political parties and candidates for non-compliance

The CEC may consider encouraging political parties to sign and apply a Code of Conduct. This Code of Conduct could include the following issues:

- ▶ asserting that tolerance and non-discrimination are cornerstones of democracies, and that electoral campaigns are crucial testing grounds for commitment to democratic values;
- ▶ committing the political leadership to speak out against hate speech and passing this message also to their supporters;
- ▶ calling on political parties to adjust their internal charters and include regulations banning hate speech;
- ▶ requiring political parties to refrain in their programmes from using discriminatory language or proposing discriminatory policies and laws; and
- ▶ committing political parties, their candidates and supporters to refrain from any form of hate speech, i.e. from voicing or supporting ideas or theories of superiority of a person or one group of persons.

The signing of codes of conduct should be accompanied by training, which may be online or in person (see also next section).

Codes of conduct are only effective if they are being monitored and their non-compliance is being penalised. Those political parties that have signed the Code of Conduct should be held accountable if they violate the Code of Conduct. Penalties might vary from withdrawing hate speech content, from billboards or social media, to paying fines or even being excluded from taking part in the elections (i.e. not registering or withdrawing registration).

The recommendations by the ECRI in Table 15 outline good practices that government officials can use to support self-regulation by political actors.

Table 15: ECRI General Policy Recommendation No. 15 on Combating Hate Speech: Codes of Conduct and penalties

Codes of Conduct

Government officials can provide support for self-regulation by public and private institutions (including elected bodies, political parties, educational institutions and cultural and sports organisations) in these ways:

- ▶ encourage the adoption of appropriate codes of conduct which provide for suspension and other penalties for breach of their provisions, as well as effective reporting channels;
- ▶ encourage political parties to sign the Charter of European Political Parties for a Non-Racist Society;
- ▶ promote the monitoring of misinformation, negative stereotyping and stigmatisation;
- ▶ encourage the unambiguous condemnation of breaches of these codes;
- ▶ support appropriate training in the meaning and negative effects of hate speech, as well as about the ways in which its use can be challenged; and
- ▶ promote and assist the establishment of complaints mechanisms.

Government officials can withdraw all financial and other forms of support by public bodies from political parties and other organisations that use hate speech (or fail to punish its use by their members) and provide, while respecting the right to freedom of association, for the possibility of prohibiting or dissolving such organisations, regardless of whether they receive any form of support from public bodies, where their use of hate speech is intended to, or can reasonably be expected to, incite acts of violence, intimidation, hostility or discrimination against those targeted by it.

2.4.7. Train political parties, independent candidates, civil servants, government communication officers and election observers

If it is mandated to do so, the CEC should engage in training of political party representatives, independent candidates, media representatives, communication officers of involved ministries and election observers. The overall goal of these training sessions should be to create an overall understanding about hate speech, its forms and consequences, regulatory approaches and non-regulatory countermeasures. Generally, any training should have the following content:

- ▶ What is hate speech campaigning?
- ▶ What are its underlying attitudes and convictions?
- ▶ When does hate speech escalate to hate crime?
- ▶ What are the penalties for hate speech campaigning?
- ▶ What are the individual and collective consequences of negative campaigning without limits against others? (for the speaker, for the victims, for the targeted institutions, for the general public)
- ▶ Where do we turn when being attacked by hate speech or when detecting hate speech?
- ▶ What are the trainees' specific roles in limiting or preventing hate speech?

The training for political parties and candidates could have additionally the following content:

- ▶ Political parties, their candidates and supporters should be confronted with the results of public opinion surveys. They should understand that their current approach is not well received by the majority of voters. It is a misunderstanding from their side that the more aggressive the campaign is, the better they are noticed by the voter. Opinion surveys (see also 2.4.2), however, show that the society has different expectations about electoral campaigning; they want to understand what the political parties and their candidates stand for (what is their electoral programme); the majority of citizens are not interested in hate speech campaigning.
- ▶ Additionally, the short-term and long-term impacts of hate speech should be brought to the attention of the political parties, their candidates and supporters. The argumentation could be as follows: "There are only short-term gains from hate speech for your party and yourself: you will receive attention – but in a negative way. In the long run, it brings more damage than benefit: it brings aggression; it pushes up the temperature of the electoral campaign; it damages your own personal life (your reputation being at risk, your being persecuted) and the life of the targeted persons (there have been already cases of killing of people)."
- ▶ Women candidates should specifically be trained. They are often targeted by hate speech, becoming cyber victims or experiencing gender discrimination by other candidates and in the media. They should be given the possibility to exchange experiences on all the challenges that they might be facing, and which measures they could be proactively taking, while not being the source of hate speech themselves.

The training for civil servants, usually focusing on their role in electoral campaigns, could include the following elements on hate speech:

- ▶ Civil servants are to be informed not only on the misuse of administrative resources, but also on the impact of hate speech during elections. The key message could be: "Even if you are supporting a political party as a voter, your responsibility as civil servant is much higher; according to legislation, you are restricted in your participation in electoral campaigning against/for a political party. Be aware of hate speech! While you are supporting a political party, you have to make sure not to be contributing to hate speech!"

The training of communication officers of involved ministries should focus on the following:

- ▶ Communication officers have a special responsibility in not spreading hate speech and in properly reacting to hate speech during electoral campaigns. Any severe hate speech incidents (such as calls for killing of a person) should be immediately reacted to and correctly reflected by government communication officers in their statements.

After the training sessions, the CEC should carry out an impact assessment to evaluate whether their training is contributing to raising awareness, diminishing the number of hate speech incidents and introducing good practices in counteracting hate speech.

2.4.8. Lobby for legislative changes

The CEC should analyse the existing legislation on hate speech and propose recommendations on counteracting hate speech in electoral campaigns. This could include, *inter alia*:

- ▶ defining concepts of “hate speech” and “incitement to discrimination”, stressing the bias motivation, recognising the overwhelming harm that hate crime causes;
- ▶ prohibiting political parties, their candidates and their supporters from any advocacy of hatred, based on national, racial, sexual, religious or other characteristics, constituting incitement to discrimination, hostility or violence – online and offline;
- ▶ recognising the candidates’ freedom of expression as guaranteed in the constitution and in international conventions;
- ▶ regulating hate speech for the whole election period (pre-election, election day, counting and tabulation) and not only for specific phases of the elections;
- ▶ criminalising hate speech in the print and digital media, hereby also holding internet providers, media owners/companies and social media networks/platforms accountable;
- ▶ forbidding government officials from engaging in hate speech and discrimination and requiring relevant state authorities to take action against hate speech;
- ▶ imposing adequate penalties on perpetrators.

2.4.9. Encourage media to professionally report on electoral campaign

The CEC should specifically reach out to traditional and online media, to media companies and owners, social media networks, journalists’ associations and journalists themselves. This could be in the form of consultative meetings and even training sessions. The CEC should focus on the following issues:

- ▶ The CEC should raise media stakeholders’ awareness about their important role during electoral campaigns. The CEC could use the following language: “It is not only the EMBs that are conducting the elections; the media also have a special role to play; they have to provide an equal platform for all political parties and candidates during electoral campaigns; they have to be balanced and fair in their reporting.”
- ▶ Journalists should be trained on the political, social and cultural rights of individuals and groups and equipped with knowledge about hate speech, its forms and mechanisms. They should be made aware what impact hate speech has on the electoral process – personally and to the long-term democratic development of the country, arguing that the media play a crucial role in promoting dialogue and democratic processes. Further, they should be sensitised to the fine line between freedom of speech and hate speech.
- ▶ In their reporting about electoral campaigns, journalists should be conflict- and gender-sensitive as well as multiculturally aware. They should refrain from any racist and discriminatory language in the media. Hate speech, especially in headlines and news titles, triggers enmity and discriminatory sentiment, while cementing stereotypes and allowing prejudices to be spread in society. When reporting on hate speech in elections, journalists should provide due explanation of and critical reflections on the context.
- ▶ Journalists should be reminded to exercise professional standards. Especially in electoral campaigns, they should write articles, air programmes and even speak with people without taking sides and falling into the trap of the “us against them” fallacy. Any further education on media ethics should focus on the rights and freedoms of journalists and their role in creating and promoting peaceful societies.
- ▶ Journalists’ organisations and media regulators should monitor media content, documenting and reporting on hate speech in electoral campaigns. Any published report or article on the language used in election campaigns that amounts to hate speech should be conducted in a responsible manner, with due explanation of and critical reflections on the context.
- ▶ Journalists should proactively engage in countering hate speech and discrimination in the media, both online and offline, by promoting ethical standards, while maintaining respect for freedom of expression. They should become aware that “every single person can make a difference”.
- ▶ Media owners/companies should react to hate speech violations in the media during electoral campaigns. Hate speech should be limited in debates and TV news; it has an even more devastating impact on social media, if it is not penalised.
- ▶ Regulatory responses to hate speech – especially on the internet – should be promoted. Without revoking the right to press freedom, standards should be clearly set, calling on media owners and internet

platforms to delete hate speech content and to reprimand journalists neglecting Codes of Ethics. (see also 2.2.3 on freedom of speech).

In Table 16, recommendations by the ECRI outline good practices by which government officials can regulate the media.

Table 16: ECRI General Policy Recommendation No. 15 on Combating Hate Speech: regulation of media

Government officials should use regulatory powers with respect to the media (including internet providers, online intermediaries and social media) and

- ▶ ensure effective use is made of any existing powers suitable for this purpose, while not disregarding self-regulatory mechanisms;
- ▶ encourage the adoption and use of appropriate codes of conduct and/or conditions of use with respect to hate speech, as well as the use of effective reporting channels;
- ▶ encourage the monitoring and condemnation of the use and dissemination of hate speech;
- ▶ encourage the use, if necessary, of content restrictions, word filtering bots and other such techniques;
- ▶ encourage appropriate training for editors, journalists and others working in media organisations as to the nature of hate speech, the ways in which its use can be challenged;
- ▶ promote and assist the establishment of complaints mechanisms; and
- ▶ encourage media professionals to foster ethical journalism.

Government officials should clarify the scope and applicability of responsibility under civil and administrative law for the use of hate speech in order to

- ▶ determine the particular responsibilities of authors of hate speech, internet service providers, web forums and hosts, online intermediaries, social media platforms, online intermediaries, moderators of blogs and others performing similar roles;
- ▶ ensure the availability of a power, subject to judicial authorisation or approval, to require the deletion of hate speech from web-accessible material and to block sites using hate speech;
- ▶ ensure the availability of a power, subject to judicial authorisation or approval, to require media publishers (including internet providers, online intermediaries and social media platforms) to publish an acknowledgement that something they published constituted hate speech.

2.4.10. Analyse the impact of CEC activities on countering hate speech

The CEC should make a critical self-assessment of its own activities aimed at countering hate speech in electoral campaigns.

- ▶ Has professional monitoring of hate speech in electoral campaigns taken place? Did the monitors formulate recommendations that the CEC took up?
- ▶ Has the CEC publicly spoken out against hate speech in electoral campaigns – especially when women were targeted?
- ▶ Did the CEC align with relevant government stakeholders to follow up hate speech cases?
- ▶ Was the CEC information campaign conflict- and gender-sensitive? Did it contribute to mitigating hate speech in electoral campaigns?
- ▶ Were election stakeholders (political parties, independent candidates, civil servants, government communication officers and election observers) trained? Did they acquire knowledge and skills on countering hate speech?
- ▶ Was a Code of Conduct introduced to political parties and candidates? Was the implementation of the Code of Conduct monitored? Were any penalties applied?
- ▶ Did the CEC lobby for legislative changes? If so, was the CEC successful?
- ▶ What kind of outreach to the media proved to be successful? What did the media change or do differently as a consequence of the interaction with the CEC?

2.5. Recommendations

Engagement in tolerance and non-discrimination is a long-term effort. While many CECs have already started making greater efforts to address hate speech, more action needs to be taken to increase general awareness

and knowledge about hate speech and specifically to decrease hate speech against EMBs and in electoral campaigns. The CEC should strive to:

- ▶ encourage state and non-state actors to proactively monitor, record and encourage targeted groups to report hate speech;
- ▶ continually meet with key electoral stakeholders to discuss hate speech issues, in order to change the atmosphere/rhetoric of all stakeholders;
- ▶ encourage key electoral stakeholders to take part in CEC training sessions or conduct their own training on hate speech;
- ▶ conduct targeted information campaigns to raise awareness about the special nature of hate speech, its forms and mechanisms;
- ▶ lobby the relevant authorities to increase their capacity to recognise, record, investigate and prosecute hate crimes effectively;
- ▶ lobby to ensure that victims are protected, enjoy full access to justice and receive tailored specialist support;
- ▶ lobby for legislative changes, stressing bias motivation and imposing adequate penalties on perpetrators.

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Chapter 3

Experience of Georgia: hate speech during electoral processes

Legislation, institutional framework and practice

*Lela Taliuri,
Elections and Legal Expert,
Council of Europe Expert*

3.1. Hate speech – General overview

This chapter reviews the legislation governing hate speech in Georgia, as well as the relevant institutional framework and practices related to the use of hate speech in elections.

There is no single standard and legal approach related to regulating hate speech, which is regulated differently in different states (Georgian Democracy Initiative 2014: 3).

According to Recommendation No. R (97) 20 of 1997 of the Committee of Ministers of the Council of Europe, “hate speech includes all forms of expression which propagate, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hostility based on intolerance, including nationalism, ethnocentrism, discrimination and expressed hostility towards minorities or migrants”. According to the same recommendation, “Governments of Member States should establish or maintain a sound legislative framework consisting of the provisions of civil, criminal and administrative law relating to hate speech”.

Hate speech and hate crime differ from each other. Hate crime does not mean expressing hatred in words, symbolically or otherwise, but committing a particular crime, such as murder, with the motive of hatred (Georgian Democracy Initiative 2014: 10). Consequently, hate speech is a cause for concern, although it is not always a criminal offence (Article 19 2015: 24).

Hate speech is closely linked to freedom of expression, which in turn is one of the most important values in a democratic society and the foundation of that society itself (Georgian Democracy Initiative 2014: 3). Freedom of expression is recognised in all important international instruments related to human rights.¹²⁴ Freedom of expression is not an absolute right and can be restricted by the state in specific, exceptional cases (Article 19 2015: 7). While the Law of Georgia on Freedom of Speech and Expression covers all important terms related to freedom of expression, it does not contain the term “hate speech” and it does not mention how much hate speech is part of freedom of expression (Georgian Democracy Initiative 2014: 3).

The European and American models of freedom of expression are to be distinguished from each other.

In response to xenophobia and intolerance established during the Second World War, Europe chose to protect ethnic, religious or other minorities, to promote tolerance and diversity in general, but at the expense of restriction of freedom of expression (ibid.: 7). According to the European model, pursuant to the approach of the European Court of Human Rights, hate speech is not protected by the European Convention on Human Rights and it can be criminalised by states (ibid.).

According to the American model, hate speech is not a punishable act and it is considered to be one of the legitimate forms of expression, unless such expression poses an obvious and immediate threat to the democratic society (Article 19 2015: 10). According to the American model, freedom of expression should not be restricted – unless there is a “clear and immediate threat” that the expression will result in harm (Georgian Democracy Initiative 2014: 10, 9).

124. United Nations, Article 19 of the Universal Declaration of Human Rights (10 December 1948) at www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf [in Georgian].

Georgia is closer to the so-called American model, which favours a high standard of protection of freedom of speech and expression; hate speech is not punishable in Georgia and it is regulated mainly in relation to media broadcasting (Georgian Democracy Initiative 2014: 16). The Constitutional Court of Georgia defines the protected area under the right to freedom of expression quite broadly and assumes in it a rather wide range of forms of expression. The Constitutional Court of Georgia shares the “obvious and immediate threat” test developed by the US Supreme Court and uses this test in relation to the restriction of freedom of expression (ibid.: 15). According to the court’s decisions, a constitutional right is restricted when that serves to ensure the good protected by the constitution, as well as when the “rights of others” protected by the constitution are to be protected.

To restrict freedom of expression, there must be three main criteria:

- ▶ restriction must be provided for by law;
- ▶ it must serve the achievement of legitimate goals;
- ▶ it must be necessary in a democratic society and it must be a proportionate means of achieving legitimate goals. (Decision section 2/2/359, p. 1).

According to the Constitutional Court of Georgia:

The court must assess the violated right or the threat of violation of the right, which may be posed by a specific program or information, and counterbalance it against the need to interfere with the freedom of expression. The court must be able to assess the value of the form and content of the expression, its public importance and, on the other hand, the damage caused by the exercise of this right. (Georgian Democracy Initiative 2014: 14)

Accordingly, in each case the court assesses:

- ▶ the public importance of the form and content of expression;
- ▶ the damage caused by the realisation of this right. (Tugushi et al. 2013: 300).

As to the substantive regulation of freedom of expression, the Constitutional Court of Georgia stated:

It is inadmissible for the constitutional right itself to be aimed at violating the democratic system protected by the Constitution and to create a basis for illegal actions. The threshold of freedom of expression passes where expression threatens the principles and values enshrined in the Constitution. (Decision 18, para. 90)

“Therefore, the constitutional right can be restricted to ensure the good protected by the Constitution” (Georgian Democracy Initiative 2014: 14). According to the constitution, one of the legitimate purposes of restricting the right to freedom of expression is to protect the rights of others:

The Constitution of Georgia recognises and strengthens the right to opinion and expression, freedom of the media, but at the same time, provides for the grounds for restriction of the right, including to achieve such a goal as the protection of the rights of others. Freedom of expression may be restricted when expression is on the verge of freedom of expression and another’s right. (Decision section 1/3/421,422, para. 6)

The ECRI, which specialises in racism and intolerance issues, in one of its recent reports on Georgia (ECRI 2016), addresses several important issues. It notes that:

- ▶ hate speech in relation to ethnic and religious minorities, as well as against lesbian, gay, bisexual, transgender (LGBT) people, is still a widespread problem in Georgia;
- ▶ the language of Islamophobic hatred is expanding. Hate speech also applies to other religious minorities;
- ▶ hate speech is widely used on the internet and it is a completely uncontrollable and unpunished phenomenon;
- ▶ politicians as well as media representatives make racist and xenophobic statements.

According to the same report, the authorities do not always adequately investigate and prosecute hate crimes, and Article 53¹ of the Criminal Code of Georgia on aggravating circumstances is rarely used.

Information on the use of hate speech during the election period is presented in the reports of the OSCE/ODIHR, the results of their observation of elections held in Georgia in different years. For example, during the 2016 parliamentary elections, several facts of hate speech and violence were revealed that, according to the organisation’s 2016 parliamentary election report, had an indirect impact on relations between ethnic groups (OSCE 2016: 35); in addition, the report included paid TV commercials by the Georgian Patriots Alliance and rallies organised by the party that contained anti-Turkish statements, which may have irritated some Azerbaijanis; the report also mentions the fact that the representatives of the movement Georgian Force attacked the eastern cafes in Tbilisi (ibid.).

During local government elections in 2017, the OSCE report reflects several cases of hate speech, xenophobic messages, threats and intimidation that, according to the report, affected relations between ethnic groups (OSCE 2017: 37); it says that, during the rally of 24 September in Batumi, the leaders of the Georgian Patriots Alliance made anti-Turkish statements; during the rally in Tbilisi on 13 October, the Democratic Movement – Free Georgia mayoral candidate made xenophobic statements; and two pre-election video clips, which were covered by various media outlets, contained anti-immigrant and Islamophobic messages (ibid.: 39).

In its report on the presidential elections of 2018, OSCE notes the widespread use of aggressive and violent rhetoric by high-ranking party officials on television, on social media and during demonstrations (OSCE 2018: 51). In addition, the report focuses on statements that were directed against opponents and contained calls for their destruction, which OSCE said were on the verge of xenophobia and hate speech. The report noted that the negative pre-election campaign and the sharp accusations did not allow for a debate oriented towards election programmes and issues, which in turn reduced the ability of voters to make informed choices. In the same report, the organisation noted that:

- ▶ representatives of Georgian Dream periodically referred to the United National Movement as a “bloody criminal regime” and the desire of the United National Movement to win as a “civil war and revenge”; also, during the rallies against the United National Movement, it was compared to “Nazis, terrorists or Satan”. The organisers of these rallies demanded the “destruction or annihilation of the party”;
- ▶ representatives of the United National Movement referred to the presidential candidate Salome Zurbishvili as a “traitor” from time to time, and to Georgian Dream as an “immoral armed gang”;
- ▶ several stakeholders in the mission, including one of the candidates, stated that he/she had been threatened with assassination;
- ▶ the third President of Georgia, Mikheil Saakashvili, has made two biased and discriminatory statements against Jews, Bangladeshis and Indians, commenting on religion, nationality and economic status.

During the parliamentary elections of 2020, 40 political parties signed a code of conduct (Code of Conduct for Political Parties 2020), by which they agreed on certain rules of conduct. In particular, the political parties agreed that:

- ▶ they would carry out activities without discrimination on ethnic, religious, gender or other grounds (Article 1.3);
- ▶ they would not use hate speech, xenophobic and/or threatening expressions (Article 1.4);
- ▶ they would promote a peaceful election environment, refrain from violence and would not encourage its use (Article 1.5);
- ▶ during the election campaign, they would refrain from disseminating public speeches, statements, propaganda materials (media, video, audio, social media, printed media), which include accusations of slander, treason, terrorism or other crimes, as well as incitement to hatred, controversy and conflict on national, ethnic, religious or other grounds (Article 2.7);
- ▶ parties would introduce and apply codes of conduct to party structures, regional organisations and day-to-day operations, providing information and performance instructions on commitments under the Code of Conduct to their own party officials, activists and supporters (Article 4.1);
- ▶ the parties agreed that they would introduce an intra-party mechanism for the enforcement and monitoring of this Code of Conduct, on the operation of which they would periodically share information and experience with other parties in order to establish an inter-party mechanism for monitoring and enforcing ethics in the future (Article 4.3);
- ▶ the parties would undertake to respond immediately to prevent the violations mentioned in the Code of Conduct (Article 4.9).

Despite the signing of the Code of Conduct by political parties, a number of negative campaigns were held during 2020 parliamentary elections, sometimes escalating into a confrontational tone. Such a practice was in conflict with the Code of Conduct that they had signed (OSCE 2020).

In addition to the adoption of the Code of Conduct of the political parties, the anti-Turkish billboard of the Georgian Patriots Alliance was in the spotlight in the pre-election period of 2020, which led to criticism of the party (ibid.). In particular, at the end of August 2020, the Alliance placed an advertising banner on the Sarp highway in Batumi. The banner, next to the name of the party, its leaders and the election number, depicted a map of Georgia on which, along with the Russian-occupied Autonomous Republic of Abkhazia and Tskhinvali region, Turkey was marked as an occupied territory (Complaint of ISFED, 2 September 2020).

During local elections in 2021, anonymous billboards appeared in Tbilisi and several cities in Georgia, depicting opposition leaders, as well as a television owner and journalist. Billboards carried the idea of a bloody past (OSCE 2021: 16). In the pre-election period of the same elections, on 16 October, the United National Movement mayoral candidate for Tbilisi described Georgian Dream as an “evildoer, traitor, criminal which is based solely on violence” and said that “we must deprive it of all support of its violence”.

On October 18, the incumbent mayor of Tbilisi, at the same time Georgian Dream mayoral candidate, called on his constituents to “end Bolshevism, evil, hatred and lies, as embodied by the United National Movement in this country” (ibid.).

Pre-election campaign monitoring reports from local organisations provide information that xenophobic and homophobic statements occupy a leading place in pre-election campaign statements, followed by hate speech statements on various grounds (MDF 2020a: 6). Particular attention should be paid to female politicians who have repeatedly become targets of sexist hate speech and stereotyping because of their political affiliation and activities (MDF 2020b: 13).

It should be noted that a number of recommendations related to prevention of hate speech have been issued by international organisations in regard to Georgia at various times, including the recommendations made by the ECRI and the OSCE/ODIHR. For example, in 2016, the ECRI called for Georgia to impose punishment for hatred (ECRI 2016: para. 40). Among the priorities of the OSCE/ODIHR Report on the parliamentary elections of 2016 was the recommendation to prevent the spread of hate speech. In particular, the organisation recommended that the relevant authorities exercise proper oversight and prevention, and respond in a timely manner to cases where hate speech is suspected (OSCE 2016: 56). Hate speech prevention was also among the priorities in the final report of the OSCE/ODIHR Office for the presidential elections of 2018, which recommended that regulations be adopted on language norms that would be acceptable during the election campaign, to prevent the possible spread of hate speech and xenophobia. In addition, the organisation believed that the relevant authorities should be able to consider possible cases of hate speech and, if necessary, apply penalties in a timely manner (OSCE 2018: 52).

3.2. Current legislation

Despite international practice, there is no comprehensive hate speech legislation in Georgia (ibid.: 51).

Hate speech is not criminalised under the law of Georgia, but there are a number of legislative acts that guarantee the protection of human rights and freedoms and prohibit discrimination, violation of equality of persons, incitement to hatred, incitement to violence, etc. (*Hate speech* 2017).

3.2.1. Constitution of Georgia¹²⁵

Constitution of Georgia, Article 11 – Right to equality

1. All persons are equal before the law. Any discrimination on the grounds of race, colour, sex, origin, ethnicity, language, religion, political or other views, social affiliation, property or titular status, place of residence, or on any other grounds shall be prohibited.
2. In accordance with universally recognised principles and norms of international law and the legislation of Georgia, citizens of Georgia, regardless of their ethnic and religious affiliation or language, shall have the right to maintain and develop their culture, and use their mother tongue in private and in public, without any discrimination.
3. The State shall provide equal rights and opportunities for men and women. The State shall take special measures to ensure the essential equality of men and women and to eliminate inequality.
4. The State shall create special conditions for persons with disabilities to exercise their rights and interests.

Constitution of Georgia, Article 12 – Right to free personal development

Everyone has the right to the free development of their personality.

Constitution of Georgia, Article 16 – Freedom of belief, religion and conscience

1. Everyone has freedom of belief, religion and conscience.
2. These rights may be restricted only in accordance with law for ensuring public safety, or for protecting health or the rights of others, insofar as is necessary in a democratic society.
3. No one shall be persecuted because of his/her belief, religion or conscience, or be coerced into expressing his/her opinion thereon.

125. Constitution of Georgia (24.08.1995) at <https://matsne.gov.ge/ka/document/view/30346?publication=36>.

Constitution of Georgia, Article 17 – Rights to freedom of opinion, information, mass media and the internet

1. Freedom of opinion and the expression of opinion shall be protected. No one shall be persecuted because of his/her opinion or for expressing his/her opinion.
2. Every person has the right to receive and impart information freely.
3. Mass media shall be free. Censorship shall be inadmissible. Neither the State nor individuals shall have the right to monopolise mass media or the means of dissemination of information.
4. Everyone has the right to access and freely use the internet.
5. The restriction of these rights may be allowed only in accordance with the law, insofar as is necessary in a democratic society for ensuring national security, public safety or territorial integrity, for the protection of the rights of others, for the prevention of the disclosure of information recognised as confidential, or for ensuring the independence and impartiality of the judiciary.

Constitution of Georgia, Article 23 – Freedom of political parties

1. Citizens of Georgia shall have the right to form a political party and participate in its activities in accordance with the Organic Law. According to paragraph 3 of the same Article, the establishment and activity of a political party that aims to overthrow or forcibly change the constitutional order of Georgia, infringe on the independence or violate the territorial integrity of the country, or that propagates war or violence or incites national, ethnic, provincial, religious or social strife, shall be inadmissible. The establishment of a political party on a territorial principle shall be inadmissible.
4. The prohibition of a political party shall be admissible only by the decision of the constitutional court, in cases defined by the Organic Law and in accordance with the established procedure.

According to Article 34 of the Constitution of Georgia, which presents the general principles for ensuring fundamental human rights, the fundamental human rights referred to in the constitution, in terms of their contents, shall also apply to legal persons. The exercise of fundamental human rights shall not violate the rights of others. The restriction of the fundamental human right shall be commensurate with the significance of the legitimate aim that it serves.

3.2.2. Law of Georgia on Freedom of Speech and Expression

According to the Law of Georgia on Freedom of Speech and Expression, “the state recognizes and protects freedom of speech and expression as inalienable and supreme human values. In the exercise of power, the people and the State are bound by these rights and freedoms as a direct law” (Law of Georgia on Freedom of Speech: Article 3.1). Any restriction of the rights recognised and protected by the Law of Georgia on Freedom of Speech and Expression, may be imposed only if it is provided for in a clear and foreseeable, narrowly targeted law and the good protected by the restriction outweighs the harm caused by the restriction” (ibid.: Article 8.1).

In addition, “the law must be interpreted in accordance with the Constitution of Georgia, its international legal obligations, including the European Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the European Court of Human Rights” (ibid.: Article 2).

3.2.3. Law of Georgia on Broadcasting

Norms forbidding hate are found in the Law of Georgia on Broadcasting. Article 56 of the law deals with programme restrictions. In particular, Article 56.2 prohibits broadcasting of programmes containing the “apparent and direct threat of inciting racial, ethnic, religious or other hatred in any form and the threat of encouraging discrimination or violence toward any group”. According to paragraph 3 of the same article, “broadcasting of programmes intended to abuse or discriminate against any person or group on the basis of disability, ethnic origin, religion, opinion, gender, sexual orientation or on the basis of any other feature or status, or which are intended to highlight this feature or status, are prohibited, except when this is necessary due to the content of a programme and when it is targeted to illustrate existing hatred”. Propaganda of war in any way is prohibited (Article 56.1), as well as the placement of a programme or advertisement that violates the dignity and fundamental rights of human beings and citizens, which contains obscenities (Article 56.4).

According to Article 14 of the Law of Georgia on Broadcasting, the broadcaster is obliged to establish an effective self-regulatory mechanism based on the Code of Conduct, which ensures that complaints are reviewed and responded to in a timely and reasoned manner, and “the plaintiff can be only an interested person or a natural or legal person whose legal interest is directly affected by the activities of the broadcaster, both in the self-regulatory body and in the commission or court” (Article 14.1. section 2.e).

3.2.4. Code of Conduct for Broadcasters

The Code of Conduct for Broadcasters, approved by the Georgian National Communications Commission on 12 March 2009, contains norms prohibiting hatred. Articles 31, 32 and 33 concern the principles of diversity, equality and tolerance and their observance.

According to Article 31 of the Code of Conduct for Broadcasters, “broadcasters shall refrain from publishing any material likely to incite hatred or intolerance on the grounds of race, language, gender, religious convictions, political opinions, ethnic origin, geographic location, or social background”. And according to Article 33 section 3, “the broadcaster should avoid causing offence to any religious, ethnic or other groups by using certain terminology and images”. According to paragraph 4 of the same article, “any unjustified referral to ethnic origin, religious faith, sexual orientation, family status, social standing or any other factor as to a cause of the problem, or the use of offensive terminology by a source in live broadcast or news programme, should not go unchallenged and presenters should ask authors of offensive statements to substantiate their views”.

According to the Code of Conduct for Broadcasters, the interested party has the right to appeal against the violation of the obligations provided by law on behalf of the broadcaster, which according to the same code represents any person referred to or mentioned in the programme or in the decision of the self-regulatory body of the broadcaster (Article 33 section 5f).

3.2.5. Criminal Code

Hate speech is not punishable under criminal law in Georgia. However, there is a crime committed on the grounds of hatred (so-called hate crime), which involves committing a specific crime, such as murder, with a hate motive, which is a punishable act (Georgian Democracy Initiative 2014: 10).

Several articles from the Criminal Code of Georgia consider crime committed on the grounds of hatred, though not directly hate speech as a punishable action. Of particular interest in this regard is Article 53¹, which defines the aggravating circumstances relevant to the punishment. In particular, part one of Article 53¹ considers as aggravating factors for liability for all respective crimes provided for by the Criminal Code “commission of crime on the basis of race, skin colour, language, sex, sexual orientation, gender, gender identity, age, religion, political or other views, disability, citizenship, national, ethnic or social affiliation, origin, property or birth status, place of residence or other grounds of discrimination, motivated by intolerance”.

Also of interest is Article 239¹ of the Criminal Code, which considers a public call for a violent act as a punishable act. According to this article, public incitement to acts of violence orally, in writing or using other means of expression in order to cause discord between certain groups based on their racial, religious, national, provincial, ethnic, social, political, linguistic and/or other characteristics, provided that this poses a clear, direct and substantial risk of acts of violence, is punishable by a fine or 200 to 400 hours of community service or, in the case of a legal entity, by liquidation or deprivation of the right to operate and a fine.

In addition, a few articles of the Criminal Code, although they do not prohibit hate speech, do guarantee the protection of human rights and freedoms. Accordingly, these articles prohibit discrimination, violation of the equality of persons, incitement to hatred or incitement to violence (*Hate speech* 2017). For example:

- ▶ Article 142, according to which violation of human equality is criminalised. Violation of human equality on the grounds of language, sex, age, nationality, origin, birthplace, place of residence, material or rank status, religion or belief, social belonging, profession, marital status, health status, sexual orientation, gender identity and expression, political or other views or of any other grounds, that have substantially breached human rights.

punishable by a fine or correctional labour (up to one year) and/or imprisonment (up to two years); or, if a legal entity, by liquidation or deprivation of the right to operate and/or a fine.

- ▶ Article 142¹ prohibits racial discrimination, which means “an act committed to incite national or racial rivalry or discord in order to degrade national honour and dignity, as well as direct or indirect restriction of human rights or giving advantage to the person based on race, colour, national or ethnic belonging, which has substantially breached his/her right”.

punishable by imprisonment (up to three years) or, if a legal entity, liquidation or deprivation of the right to operate and/or a fine.

- ▶ Article 144^{3-e}– degrading or inhuman treatment.

punishable by a fine or imprisonment (three to seven years) with or without restriction of rights related to weapons.

- ▶ Article 155-e – unlawful interference with the performance of divine service.
- ▶ Article 156-e – persecution.
punishable by a fine or imprisonment (up to two years).
- ▶ Article 166-e – unlawful interference with the establishment of political, public or religious associations or with their activities.
punishable by a fine or correctional labour (up to one year) or house arrest/prison (up to two years).
- ▶ Article 408-e – crime against humanity.
punishable by imprisonment (12 to 20 years or life).

3.2.6. Law of Georgia on Assemblies and Demonstrations

During the assembly or demonstration, it shall be prohibited to call for the overthrow or change of the constitutional order of Georgia by force, for encroachment of the independence and territorial integrity of the country, or for actions that are intended to propagate war or violence and that incite national, regional, religious or social hostility and pose an obvious, direct and essential threat to actions considered in this article (Article 11.1).

3.2.7. Law of Georgia on Public Service

According to the Law of Georgia on Public Service, a public institution shall, for ensuring observance of the principle of equal treatment for persons at the place of work, take measures for the equal treatment of persons employed by an institution, and it shall include anti-discrimination provisions into the bylaw and other documents of the public institution and shall ensure they are complied with (Article 56.3). According to the same law, neglect and breach of ethical norms and the general rules of conduct that are intended to discredit an officer or a public institution, irrespective of whether it is committed at or outside work, constitute a disciplinary misconduct (Article 85.1.c).

3.2.8. Organic Law of Georgia on Political Associations of Citizens

It shall be impermissible to establish and operate a party whose aim is to overthrow or forcibly change the constitutional order of Georgia, or to infringe on the independence and territorial integrity of the country, or to conduct or propagandise war or violence, or to stir up national, ethnic, religious or social strife (Article 5.2).

Membership of a party may not be restricted by reason of race, colour, language, sex, religion or national, ethnic or social belonging, origin, property or birth status or place of residence (Article 11).

The Constitutional Court of Georgia may ban a party that aims to overthrow or forcibly change the constitutional order of Georgia, or to infringe on the independence and territorial integrity of the country, or to propagandise war or violence, or stir up national, ethnic, religious or social strife or that is forming or has formed an armed group (Article 36).

3.2.9. Law of Georgia on the Elimination of All Forms of Discrimination

On 2 May 2014, the Parliament of Georgia adopted the Law of Georgia on the Elimination of All Forms of Discrimination, which contains all the important definitions and mechanisms related to the prohibition of discrimination (Georgian Democracy Initiative 2016: 19). The purpose of the law is to eliminate all forms of discrimination and to ensure equal enjoyment of the rights established by the legislation of Georgia for any natural and legal person according to the ground defined by the law, such as: race, skin colour, language, sex, age, nationality, origin, place of birth, place of residence, property or rank, religion or belief, nationality, ethnicity, social background, profession, marital status, health status, disability, sexual orientation, gender identity and expression, political views or other views or signs (Article 1). The law prohibits any kind of discrimination. It should be noted that the discriminatory grounds listed by law are not exhaustive (Georgian Democracy Initiative 2016: 19).

The law defines direct and indirect discrimination. According to Article 2(2), direct discrimination is defined as:

the kind of treatment or creating the conditions when one person is treated less favourably than another person in a comparable situation on any grounds specified in Article 1 of this Law or when persons in inherently unequal conditions are treated equally in the enjoyment of the rights provided for by the legislation of Georgia, unless such

treatment or creating such conditions serves the statutory purpose of maintaining public order and morals, has an objective and reasonable justification, and is necessary in a democratic society, and the means of achieving that purpose are appropriate.

Indirect discrimination is a situation where a provision, criterion or practice, neutral in form but discriminatory in substance, puts persons having any of the characteristics specified in Article 1 of this law at a disadvantage compared with other persons in a comparable situation, or equally treats persons who are in inherently unequal conditions.

Direct discrimination is the treatment or creation of conditions that put a person at a disadvantage, while indirect discrimination is a situation when a provision, criterion or practice neutral in form and discriminatory in substance ... puts a person at a disadvantage" (Georgian Democracy Initiative 2016: 66).

The following may not be considered discrimination (ibid.: 20):

- a. special and temporary measures designed to promote or achieve *de facto* equality (e.g., on gender issues as well as in relation to persons with disabilities).
- b. any differences, inadmissibility and advantages in relation to a particular job, activity or field that are based on specific requirements.

According to Article 3¹(2) of the law, the concept of harassment is defined as follows: "Harassment is the persecution, coercion and/or undesirable behaviour in relation to a person on any grounds, which is intended to cause or causes degrading the dignity of a person and creating a terrifying, hostile, humiliating, degrading or abusive environment for him/her".

According to Article 2(5) of the law: "Any action carried out for the purpose of forcing, encouraging, or supporting a person to discriminate against a third person within the meaning of this article shall be prohibited". Thus, the law prohibits not only discrimination but also its promotion. An action aimed at inciting a person to discriminate against a third party, "can be considered as prohibition of hate speech, as inciting a person to discriminate may be done through the use of hate speech" (ibid.: 57, 68).

It should also be noted that the legislation does not provide for mechanisms for holding a person liable for an act (ibid.: 70).

Any person who considers himself/herself a victim of discrimination has the right to file a lawsuit against the person/institution which allegedly discriminated against him/her, and to claim compensation for non-pecuniary and/or pecuniary damage (Article 10). According to the established mechanism, the victim of discrimination can apply to two independent legal remedies: the court or the Public Defender (Georgian Democracy Initiative 2016: 62). The elimination of discrimination and ensuring of equality is supervised by the Public Defender of Georgia, who for the exercise of the powers conferred by law prepares and sends general proposals to the relevant institution or person on the issues of preventing and combating discrimination (Article 6). In addition, the Public Defender investigates the fact of discrimination (both in the presence of an application or complaint, and on his/her own initiative) and issues a relevant recommendation (Article 6.2.c).

3.2.10. Law of Georgia on Advertising

The Law on Advertising recognises unethical advertising as any advertisement that violates universally recognised human and ethical norms by using abusive words and comparisons in relation to nationality, race, profession, social origin, age, gender, language, religion, political and philosophical beliefs of natural persons, and that infringes on objects of art and historical and architectural monuments included in the list of national and world cultural heritage, discredits state symbols (flag, coat of arms, anthem), the national currency of Georgia or of any other state, religious symbols, natural and legal persons, or their activity, profession or goods (Article 3.5).

3.2.11. Self-regulation mechanism – Charter of Journalistic Ethics

According to Article 7 of the Charter, "a journalist must understand the danger of encouraging discrimination by the media; therefore, everything should be done to prevent discrimination against any person on the basis of race, sex, sexual orientation, language, religion, political or other views, national or social origin or any other grounds".

In addition, Combating Hate Speech guidelines have been developed for the media, setting out basic rules for journalists.

3.3. Hate speech in elections – Practice

3.3.1. The background to Georgian elections

The current practice of using hate speech in elections is not rich, but it is very interesting. Based on the existing legal framework, it is clear that decisions made by an administrative body (for example, an authorised person of the election administration, the Georgian National Communications Commission) on the recognition of election subjects or media outlets as administrative offenders and the application of administrative violation protocols to them are not final and need to be approved and reviewed by a court. Consequently, the decisions of the administrative body/official are interim, and the current practice speaks for itself.

Common courts, when adopting decisions on hate speech cases, rely on both the case law of the Constitutional Court and the case law of the European Court of Justice, which deserves a positive assessment. In case of restriction of freedom of expression, the court shares the standard established by the Constitutional Court of Georgia, according to which the constitutional right itself should not be aimed at violating the democratic institution protected by the constitution and should not create grounds for illegal actions.

This section presents several cases involving the use of hate speech during the pre-election campaign period, which is governed by the Organic Law of Georgia Election Code.

During the pre-election period, special responsibility falls on political parties, candidates for election subjects, election subjects and their supporters, which is reflected in Article 45(3) of the Election Code. According to this article, legal proceedings can be initiated against the use of hate speech in the election programmes of election subjects during the pre-election campaign. In particular, the pre-election programme of political parties must meet several requirements and should not include:

- ▶ propaganda of war and violence;
- ▶ call for violent change or overthrow of the existing state and public institutions;
- ▶ call for violation of the territorial integrity of Georgia;
- ▶ call for national strife and enmity;
- ▶ call for religious and ethnic confrontation.

According to Article 1(d) of the Law of Georgia on Freedom of Speech and Expression, an appeal is a statement, the author of which aims to cause or obviously provokes certain action.

The pre-election campaign (canvassing) starts 60 days before the polling day. According to Article 2(z₇) of the Election Code, an election campaign is a set of measures carried out by an electoral subject or candidate for electoral subject aimed at running in and winning elections, and according to paragraph z₈ of the same article, canvassing is an appeal to voters in favour of or against an electoral subject/candidate, as well as any public action facilitating or impeding their election and/or containing features of an election campaign, including the participation in the organisation/conduct of pre-electoral events, preservation or dissemination of election materials, work on the list of supporters, presence in the representations of political parties.

Violation of the rules established by Article 45(3) of the Election Code by political parties, candidates of election subjects and their supporters is a violation of the rules of conducting the pre-election campaign (canvassing) established by the Election Code, which according to Article 79(1) of the Election Code means participation in a pre-election campaign in violation of the requirements of the Election Code, for which the same code provides for a fine in the amount of GEL 2 000.

Pursuant to Article 93(1) of the Election Code, the protocols of administrative offences provided for by Article 79(1) shall be drawn up by the CEC chairperson, and persons (officials) authorised by the CEC and respective DEC. In cases of administrative offences provided for in Article 79, legal proceedings shall be conducted in accordance with the Code of Administrative Offences of Georgia, unless otherwise provided for by the Election Code (Article 93(5)).

The CEC chairperson and the authorised persons (officials) of the CEC and relevant district election commissions shall make a decision on drawing up a report on the administrative violation provided for by Article 79(1) within 10 days, and the deadline for the court to establish/decide on the fact of an administrative offence should not exceed 10 days after the submission of the relevant protocol to the court (Article 93(6)).

The decision made by a person having the right to draw up a protocol of administrative offence, who is authorised by the Electoral Administration of Georgia under this law, or by the CEC chairperson on refusing to draw up a protocol of administrative offence with regard to the violation of the Georgian electoral legislation, may

be appealed to the court within two calendar days after it is made. The court shall consider the complaint within 10 calendar days after it is received. The court shall, as a result of case consideration, make a resolution to impose an administrative penalty or refuse to allow the complaint (Article 93(9)).

3.3.2. Political advertisements of the Georgian Patriots Alliance in 2020

On 2 September 2020, the International Society for Fair Elections and Democracy (ISFED) filed a complaint with the CEC chairman alleging a violation of Article 45(3) of the Election Code by the election subject Alliance of Georgian Patriots. The complaint requested the drawing up of a report on an administrative violation against the party. It was also requested that the party should be called to stop distributing the disputed videos and to comply with the election law (Complaint of ISFED 2020).

According to the complaint, the Georgian Patriots Alliance had published nine political advertisements on its official Facebook page titled “David Tarkhan Mouravi, Irma Inashvili, the Patriots Alliance”, six of which contained illegal content. The six advertisements carried the inscription “Defend Adjara, Defend Your Share of Georgia”. Irma Inashvili, the leader of the party, appealed: “Defend your share of Georgia. You can do it. Let’s act, do not give Adjara to Turkey”. According to the complaint, in the advertisement the leaders of the Patriots Alliance portrayed Turkey as an unrelenting enemy trying to conquer the historical corners of Georgia: Adjara, Samtskhe-Javakheti and Guria. In addition, according to the author of the complaint, the historical past was presented as an immediate and existing threat, and the political advertisements contained anti-Turkish calls aiming at creating hostility among Georgian citizens towards the Turkish state, as well as inciting religious and ethnic hatred. Accordingly, the videos released by the Georgian Patriots Alliance contradicted the requirements of Article 45(3) of the Election Code and contained signs of national animosity and hatred, and were aimed at inciting ethnic and religious strife.

Such violations had happened before. According to the report of the 2016 Parliamentary Elections, the chairman of the CEC of Georgia drew up a violation report on 8 October 2016 in relation to the election bloc the Georgian Patriots Alliance – United Opposition, which was fined GEL 2 000 for illegal videos (CEC Georgia 2016: 156).

On 10 September 2020, the CEC chairman drafted an administrative violation report against the Alliance of Patriots of Georgia and the case materials were sent to the court. According to the decision of the CEC chairman, the content of the political advertisement contravened the requirements in Article 45(3) of the Election Code (Administrative Violation Protocol 001964).

According to the party, the videos reflected historical facts that were proven and consistent with the real facts. That is why the call that was voiced in the videos should be considered as freedom of speech and expression. In addition, according to party representatives, the product in the form of videos belonged not to the party, but to the organisation Muslim and Christian Brothers for the Protection of the Unity of Georgia. They alleged that the videos were previously broadcast on TV channels and shared on a page created by party supporters only in late August.

After reviewing the case materials and evidence, the court found confirmed the fact that the Georgian Patriots Alliance had committed a violation under Article 45(3) and Article 79 of the Election Code, and on 17 September 2020 the election subject was fined GEL 2 000 (Resolution of Tbilisi City Court 2020).

The court found that the Georgian Patriots Alliance violated the requirement of Article 45(3) of the Election Code, which was manifested by the party posting a promotional video on its Facebook page, which was assessed as a call for national hatred and enmity, religious and ethnic confrontation. The court considered that the statements of the party leaders were beyond the scope of freedom of speech and expression and contravened the requirements of Article 45(3) of the Organic Law of Georgia on the Election Code.

3.3.3. The case of bloody banners

Posters containing hate speech were first erected during the presidential election of 2018 and then for the second time before the official start of the local government election campaign of 2021. The banners read: “No to the Nazis! No to the evil!”

Bloody election banners were placed in Tbilisi and several cities of Georgia, including Kutaisi, Rustavi, Telavi and Gori, two weeks before the local government elections of 2 October 2021. There was an inscription on the banners, “No to the Nazis, no to the evil, no to betrayal”. The banners featured election subjects from the United National Movement, European Georgia, Girchi – More Freedom and For Georgia, namely Nikanor Melia, Giorgi Gakharia, Zura Girchi Japaridze, Giorgi Bokeria, Mikheil Saakashvili and Gubaz Sanikidze, as well as media managers Nodar Meladze and Nika Gvaramia.

During 18-21 September 2021, three subjects filed an individual complaint with the election administration: the local observer organisation ISFED and the political union United National Movement and Elene Khoshtaria – Droa.

The complainants indicated that the banners had violent content and were placed anonymously, that Article 45(3) was also violated as the campaign materials contained propaganda of violence and that banners of this form and content deepened the polarisation in society and contained risks of controversy (Complaint of ISFED). The political party Droa and the United National Movement explained in their complaint that the banners bore the content of the pre-election campaign materials, violated the law and stirred up strife and controversy in society. The banners also led to the polarisation of the public and served to discredit election subjects (Complaint of Elene Khoshtaria – Droa). Accordingly, the campaign material was a public action against the election subjects (Complaint of ISFED 2021).

According to the Complaint of the United National Movement (UNM) on 21 September 2021, the banners depicted hate speech and disgust aimed at discrediting a large number of opposition parties and thus influencing the will of the electorate (Complaint of UNM 2021). Such an action served the interests of the ruling party. The banners were pre-election agitation in a negative context and aimed at hindering the election of specific election subjects. According to the authors of the complaint, there was a violation of the agitation rule, which envisaged the penalty provided for in Article 79(1) of the Election Code. In addition, the UNM in its complaint referred to media information, according to which the placement of billboards was related to citizen Mikheil Gabriadze, who according to media information was affiliated with the ruling party. In addition, the election banner was placed in violation of the law: billboards were hung on banners placed as part of the vaccination campaign, which was funded from the state budget. Accordingly, the use of administrative resources took place. It was requested to remove the banners and draw up an administrative violation report against Mikheil Gabriadze, the offender.

In their complaints, Droa and the ISFED stated that, according to Article 46(6) of the Election Code, the agitation material should include the names and addresses of the manufacturing and customer organisations, information on circulation, serial number and date of issue, which was not depicted on the disputed election banners (Complaint of Elene Khoshtaria – Droa 2021).

According to the official statement from the CEC, “hate speech in any form is unacceptable to the election administration and promoting its circulation goes beyond ethical norms” (Decision of the CEC 2021). However, the letter from the CEC chairperson of 28 September stated that the action taken by a private person, Mikheil Gabriadze, could not be considered as part of an election programme under Article 45(3) of the Election Code, as the banners were placed by a private person and not by a political party, an election subject and their supporter. According to the CEC, the banners were placed by LLC Alma by order of Mikheil Gabriadze and were not donated by any political party, election subject or state budget. Accordingly, there was no violation of the requirements set forth in Article 45(3) of the Organic Law of Georgia Election Code of Georgia, and as a result there was no basis for drawing up an administrative violation report against a natural person – Mikheil Gabriadze (Statement of CEC 2021).

The ISFED and the UNM filed a complaint with the court, requesting that the individual act of the CEC chairperson be annulled and that Mikheil Gabriadze be held administratively liable. By its decision of 8 October 2021, the court fully shared the position of the CEC chairperson regarding the mentioned case (Resolution of Tbilisi City Court 2021). Accordingly, the decision of the CEC chairperson to refuse to file an administrative violation report against Mikheil Gabriadze remained in force and the complainants, the UNM and the ISFED, were refused satisfaction of their complaint.

3.3.4. Political advertisement of Free Georgia

In August 2012, the pre-election advertisement of the political union Free Georgia was disseminated through social networks. The party ran in the 1 October 2012 parliamentary elections.

The advertisement featured the Free Georgia election programme, the party’s vision for a number of issues it intended to implement if it came to power. Among other things, the advertisement (see GYLA 2012) mentioned the following.

We will nationalise the forests and pastures seized by foreigners. We will return the land to the Georgian peasant. We will replace English inscriptions and Turkish flags with Georgian ones. We will stop the construction of Azizie complex in Batumi. We will forbid the extreme propaganda of homosexuality and sects.

Mentioning foreigners in a negative context featured Chinese workers in advertisements, while the ban on “homosexuality and cross-sectarian propaganda” featured peaceful and legitimate demonstrations by LGBT individuals on 17 May 2012 (see GYLA 2012).

The Georgian Young Lawyers' Association, the Women's Initiative Support Group, the United Georgia Multinational Movement, the Bishop of the Georgian Evangelical Baptist Church, LGBT Georgia and Identoba applied in writing to the Georgian CEC and called on the political union to draw up a report on an administrative violation against Free Georgia.

According to the complainants, the video clip/election programme made by the political union Free Georgia violated the prohibitions because it contained a call for national strife and enmity, religious and ethnic confrontation. According to the complaint, the Free Georgia political union aimed to gain voters' support, provoke their interest in the 2012 parliamentary elections and, in the event of coming to power, offered them a promise to carry out tough measures against vulnerable minority groups, measures that were incompatible with democratic values and human rights (GYLA 2012). The complainants stated that the advertisement disseminated by the political union Free Georgia was reinforcing stereotypes that hindered the full integration of religious, national or sexual minorities into society. Accordingly, the political union Free Georgia was conducting pre-election agitation in violation of Article 45(3) of the Election Code, for which a fine of GEL 2 000 was envisaged (GYLA 2012).

On 18 September 2012, the CEC chairperson decided to uphold the complaint, drawing up an administrative violation report against the political union Free Georgia for violating the requirements of Article 45(3) of the Organic Law of Georgia Election Code of Georgia. The CEC chairman sent the case to court.

On 25 September 2012, the Court of First Instance found the party an administrative offender and fined it GEL 2 000 under Article 79 of the Election Code. The political party appealed the decision of the Court of the First Instance to the Court of Appeals. By a decision of the Court of Appeals of 29 October 2012, the decision of the Court of the First Instance was annulled and the party was released from administrative liability. The Court of Appeals found that the video posted on social media by the political party (its future activities plan) did not contain propaganda of war and violence, violent change or overthrow of the existing state and public order, violation of Georgia's territorial integrity, national hatred and enmity, religious and ethnic hatred. Accordingly, by the court decision, the fact that the political party committed an offence under Article 45(3) and Article 79 of the Election Code did not take place (Resolution of Tbilisi Court of Appeals 2012).

3.3.5. Free political advertisement of European Georgia

On 7 September 2021, the political party European Georgia – Movement for Freedom submitted a video clip to Imedi TV for the broadcasting of free political advertising. "The country is ruled by incompetent, corrupt and traitorous people," stated the video clip, which was part of European Georgia's campaign, Social Rescue. The party offered, to anyone who might be the target of pre-election threats related to jobs or sociopolitical/economic pressure from the government, a hotline they could call and receive the appropriate assistance (Netgazeti 2021).

Imedi TV refused to air the free political pre-election advertising of the European Georgia political party on the grounds that it contained hate speech.¹²⁶ According to the TV station, the video text contained insult and ridicule, and its content was unethical and unconscientious. The company believed that the advertisement used insults not only against specific political entities, but also against Imedi TV. Accordingly, it was an inappropriate advertisement, the placement of which was prohibited by Article 63(2) of the Law of Georgia on Broadcasting.

The European Georgia – Movement for Freedom political party filed a complaint with the Georgian Communications Regulatory Commission, requesting that the complaint be considered and that an administrative violation report be drawn up against Imedi TV. According to the party, their advertisement on the TV station was a product of political/pre-election content, which contained focus by the public on topical and painful issues, so Imedi TV's decision was illegal. The party asserted that the refusal of the TV station to place advertisements constituted interference in the content of the political party's advertisements, and censorship directed against political parties and voter awareness. In addition, the video did not contravene the requirements established by the legislation of Georgia.

On 17 September, the Georgian Communications Regulatory Commission drew up an administrative violation report against Imedi TV, based on Article 194(2) of the Election Code, which envisaged an administrative penalty: a fine of GEL 5 000 (Complaint of European Georgia 2021). The protocol stated that LLC Imedi TV did

¹²⁶ OSCE 2016 Final Report on Parliamentary Elections of Georgia, 8 and 30 October 2016, at www.osce.org/files/f/documents/e/e/297551.pdf, p. 17.

not broadcast political/pre-election advertisements submitted to it by European Georgia – Movement for Freedom, thus violating Article 186(5) of the Election Code, according to which “free airtime shall be given equally to those parties and election blocs that have overcome the relevant electoral threshold established by the Constitution of Georgia in the last parliamentary elections in accordance with the rules established by the Election Code”.

The report of the violation was sent to the court for consideration. According to the decision of the Court of the First Instance on 19 September 2021, Imedi TV was considered an offender and was fined GEL 5 000. The court found that the video submitted by European Georgia – Movement for Freedom did not contravene the general requirements and principles established by the constitution, nor the norms established by the election legislation and the Law of Georgia on Broadcasting. In addition, the video could not be considered inappropriate, unconscientious advertising. The notion of inappropriate advertising was given in the Law on Advertising and, according to Article 2(5) of the same law, this definition could not be applied to political advertising.

Imedi TV appealed the decision to the Court of Appeals. According to the decision of Tbilisi Court of Appeals of 4 October 2021, the appeal of Imedi TV was rejected and the decision of the Court of the First Instance remained in force.

3.4. Conclusion

The use of hate speech in elections and negative pre-election campaigns damage the pre-election environment and, above all, have a negative effect on the voters. In the presence of a negative pre-election campaign, there is no opportunity to focus more on the specific problems of the voter and his/her needs. In such conditions, during the pre-election campaign, there is no opportunity for substantive discussion of election programmes or content-oriented debates, and finally voters are not given the opportunity to make an informed choice. In the presence of such problems, the voter may lose confidence and interest in the electoral and political process.

The pre-election campaign in Georgia is conducted in a negative context, where disrespect of political opponents, sharp accusations, intolerance of different opinions, threats, aggression, facts of violence and confrontation are observed. Political polarisation in Georgia is one of the most pressing issues, which hinders the conduct of political processes in a calm and constructive environment. Politicians make xenophobic and homophobic statements during the election campaign (MDF 2020a: 6). Female politicians become the objects of the use of hate speech because of their political activities (MDF 2020b: 13). Reports on Georgia show that hate speech is widely used on the internet and is an uncontrollable and unpunished phenomenon (ECRI 2016).

The discussion on the prevention of the use of hate speech in elections should take into account both the legislative framework of Georgia and the context of the country.

In reviewing the legislative framework, it should be noted that hate speech is not criminalised in Georgia. The country has chosen a high standard of freedom of expression, namely the American model, in which freedom of expression is not restricted unless there is a “clear and immediate threat” to a democratic society. We believe that, in the presence of such a model, additional legislative regulation of hate speech would not be in line with the high standard of protection of freedom of expression that Georgia gave priority to in 2004 with the adoption of the Law on Freedom of Speech and Expression. In doing so, Georgia, as a post-Soviet country, has further prevented, persecuted and controlled dissenting opinion at the legislative level.

As for the political context, several circumstances need to be considered here. First of all, the degree of development of democracy in the country, the state of implementation of democratic reforms, the state of human rights protection, freedom of the media and guarantees of the activities of political parties must be assessed. In post-Soviet Georgia, which has been on the path of democratic development for 30 years, one-party rule is still strong and most political parties are largely institutionally weak. There are questions about the independence of the judiciary, and also there are significant challenges in terms of human rights protection. Consequently, additional regulation of the use of hate speech carries a high risk of placing significant restrictions on freedom of speech and expression, control of political statements and further explanation of the need to enforce legislation. At the same time there are already a number of legislative acts in the country that guarantee the protection of human rights and freedoms and prohibit discrimination, violation of equality of persons, incitement to hatred, incitement to violence and the like (*Hate speech* 2017). Given these circumstances, we cannot see the need for further regulation of hate speech.

For the purpose of preventing the use of hate speech in elections, a comprehensive approach to the issue is important, which includes civic education, awareness raising and the promotion of a political culture, as well as the improvement of existing regulations and their enforcement.

3.4.1. Education and awareness raising

One of the necessary and correct ways to prevent the use of hate speech is to actualise the issue, to put more emphasis on education and awareness raising on topics such as tolerance, freedom of speech and expression, and acceptance of dissenting opinion. It is important to promote political pluralism and introduce a culture of political debate.

The role of the media and the existence of independent and professional media are very important. It is important that the news media, as the disseminator of information, first and foremost act in accordance with high professional and ethical standards, in order to prevent the broadcast network or newspaper/internet space being used for the propagation and dissemination of hate speech.

It is important to monitor the widespread hate speech on the internet and to develop a response strategy to the use of hate speech in this regard.

3.4.2. Promotion of political culture

Political parties should pay special attention to the content of pre-election campaign materials and political/pre-election advertisements and should try to ensure that the content of this material is in full compliance with the requirements of the Election Code, especially Article 45(3) of the Election Code, which sets the basic standards of the pre-election programme. In the pre-election period, more emphasis should be put on developing election programmes and introducing them to the electorate. Pre-election statements and materials should be focused on the election programme, and public statements should be free from violent rhetoric and hate speech.

Self-regulation is crucial to prevent the use of hate speech in elections. Political parties should establish rules of conduct so that political and public statements are free from hate speech or language that incites resentment and controversy. In general, and especially in the pre-election period, parties should refrain from using methods such as hate speech, xenophobic and homophobic statements, campaigns of disinformation and discrediting, and verbal and physical abuse of political opponents as tools of political struggle. Rules of conduct should be well written and agreed, not only between different political parties, but also with party members, the activists who are involved in the election campaign. Political parties and candidates should make special efforts to comply with these rules and their implementation, and should constantly monitor compliance with these rules by strengthening internal party discipline.

3.4.3. Rules and their enforcement

In order to prevent the use of hate speech, it is also important to improve and revise existing regulations so that they work effectively in practice. For example, Article 79(1) of the Election Code stipulates the liability of a political party, election candidate, election subject and their supporters in the amount of GEL 2 000 for participating in pre-election canvassing that is in violation of the requirements of the Election Code. It is on the basis of this article that liability is imposed for violating the requirements of Article 45(3) of the Election Code. The fact is that this sanction is ineffective and cannot ensure the protection of public interests. Accordingly, the existing sanction for violation of Article 45(3) of the Election Code should be revised. A fine higher than GEL2 000 should be imposed as a liability, and the use of hate speech should result in the cancellation of the election registration of a person nominated by a particular party or majoritarian list, with his/her removal from the election list, in cases where violation of Article 45(3) of the Election Code is confirmed.

One other mechanism affecting the use of hate speech is the improvement of enforcement rules. Relevant government bodies/officials should exercise appropriate oversight, prioritise prevention and respond promptly to cases where hate speech is used, including the possibility of timely imposition of penalties on offenders. For example, from a criminal point of view, it is important that law enforcement agencies thoroughly investigate hate crimes and make proper use of Article 53 of the Criminal Code of Georgia on aggravating circumstances when considering each specific case.

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Training module



Training Module on Combating Hate Speech in Electoral Processes for Election Management Bodies

14-15 June 2021

The Council of Europe Project

Supporting Transparency, Inclusiveness and Integrity of Electoral Practice and Process in Georgia

1. Background

As a result of changes in 2009 to the Organic Law of Georgia, the Election Code of Georgia, a Centre for Electoral Systems Development, Reform and Training (the Training Centre) was established at the Central Election Commission of Georgia (the CEC). The Training Centre delivers training courses on electoral matters for election officials at all levels of the election administration and other electoral stakeholders (such as political parties, civil society organisations, media and voters). The Training Centre develops training modules and conducts cascade training to provide consistent and systematic professional growth of election officials and electoral stakeholders. The current module focuses on the topics related to countering hate speech in electoral processes.

2. Module trainer/expert

The training is conducted by Dr Marie-Carin von Gumpfenberg, former Election/Democratisation Officer of the OSCE Mission to Georgia (2005-9) and the Council of Europe trainer for Georgian election watchdogs on international electoral standards and election report writing (2012-19).

3. Relevance of the subject matter

Discrimination, hate crime and hate speech are on the rise in Georgia. This is well exemplified by the widely covered incidents targeting sexual and religious minorities. Past elections have shown that hate speech and sexism are more and more becoming a pattern in electoral campaigning. This became most obvious during the last presidential elections when a woman candidate stood for office.

Election Commission members, especially at lower levels, seem to be generally moderately informed about the legal framework on discrimination, hate crime and hate speech, the relevant international standards and good practice. Existing redress mechanisms seem to be seldom used by victims or by election officials. There is a need to raise awareness of how to prevent and how to address instances of hate speech, not only during electoral campaigns, but throughout the electoral cycle, including international standards and good practice.

There have been some efforts to regulate hate speech in Georgia. While some were in favour of regulation, some are against. Those in favour argue that there is broad consensus about the key principles of freedom of speech, while those against say that any regulation would limit freedom of speech.

4. Overall goal of the training

The overall goal of the training module is to contribute to a decrease in hate speech and hate crime, by providing election officials with the knowledge and tools to identify and respond to cases of hate speech and hate crime within their own ranks and conducted by campaign officials. To achieve this goal, the CEC Training Centre will offer training courses to all election officials and other electoral stakeholders; as a result, all involved

election officials will have the same minimal guaranteed level of expertise on hate speech and incitement to hatred in electoral processes, including Council of Europe standards, relevant legal and policy instruments, national legislation and the practice of election administration, and the jurisprudence of domestic courts.

To establish a training standard, the expert will provide a basis for training to selected election officials, who then will be best equipped to train other election officials.

The training course will include the following four modules:

- ▶ Session I. Hate speech. An introduction: The Council of Europe legal and policy instruments
- ▶ Session II. Hate speech in electoral processes and election management bodies
- ▶ Session III. Related terms and statistics
- ▶ Session IV. Hate speech and election campaigns

5. Objectives of the training

The overall objective of the training is to provide election officials with a deeper knowledge of hate speech and hate crime against election officials and voters as well as during election campaigns, including knowledge of the Council of Europe standards and practices:

- ▶ **Hate speech in electoral processes:** Participants are able to identify and differentiate hate speech and hate crime, apply respective norms and international good practices, and are informed about appropriate redress mechanisms.
- ▶ **Hate speech against election officials and voters:** Participants are able to mitigate risks and address physical and psychological violence and intimidation.
- ▶ **Hate speech during election campaigns:** Participants know which preventive and reactive measures are to be taken.

6. Training target group

Election officials and other electoral stakeholders. Ideally, they represent the CEC Training Centre and officials and others at the CEC, DEC and PEC levels.

The Training Centre will provide training not only to election officials but also to other groups, such as electoral stakeholders and voters, including students at universities.

7. Process of designing the training

The training course on “Countering hate speech in electoral processes” was developed by the trainer, who referred to available literature from the European Union, the Council of Europe, the ACE Electoral Knowledge Network and the Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights (OSCE/ODIHR). She also consulted with representatives of the Council of Europe Office in Georgia and with the Central Election Commission in Georgia.

8. Partners

- ▶ The Council of Europe project Supporting Transparency, Inclusiveness and Integrity of Electoral Practice and Process in Georgia. The overall objective of the project is to improve electoral processes in Georgia and bring it closer to European and international standards and good practices in electoral matters.
- ▶ The CEC Georgia and the CEC Training Centre.

9. Instruction methods

The following instruction methods are used during the training: presentation/lecture, facilitator-led discussions and group work.

Presentations are the most common and easily consumed types of instruction. The best training method is, however, group work. When participants can elaborate issues on their own, they learn most.

Participants will be asked to present the results of their group work. The expert will facilitate these presentations, thereby leading the discussion to the wanted outcome without depriving the applicants of their said sense of ownership.

10. Training evaluation

Evaluation is a training quality-management tool that enables the Council of Europe and the trainer/expert to evaluate and measure training effectiveness and to identify issues that need further improvement. The following methodology will be used.

- ▶ Pre-training test: Participants will fill in a brief questionnaire at/before the beginning of the training to take stock of their level of experience and their training needs in the field of hate crime and hate speech.
- ▶ Post-training test I: The participants will assess the training at the end of the training session by filling in a brief survey.
- ▶ Later, the trainer will provide a written report about the training, drawing lessons learned about the training.
- ▶ Post-training test II: In addition, the Council of Europe might send out a questionnaire to the participants within two weeks of the conduct of the training.

11. Annexes

Annex 1 – Training agenda

Trainer/Expert: Dr Marie-Carin von Gumpfenberg

Training Format: Online Training

Training Methods:

- Brainstorming
- Snowball effect
- Discussions led by a facilitator
- Discussion in small groups
- Debates
- Problem resolution
- Role play / Mock trial
- Cases / practical examples
- Briefing
- Presentation/lecture

Training duration: 2 days

Day I: 14 June 2021

Session I: Introduction

Session II: Hate speech and election management bodies

14:00-14:15 Opening remarks

Chairperson at the Central Election Commission of Georgia

Council of Europe, Head of the Elections and Civil Society Division

14:15-14:45 Introduction

Marie-Carin von Gumpfenberg, the Council of Europe expert

- ▶ **Presentation: Introduction – the Council of Europe legal and policy instruments**
 - Definitions
 - Mechanisms
 - Consequences
 - Hate speech and hate crime
 - Hate speech and freedom of expression

14:45-15:30 Hate speech and electoral management bodies

► **Brainstorming in groups (Zoom breakout sessions) on the following questions:**

1. What hate speech challenges are election management bodies facing?
2. What good practices are already applied to mitigate the challenges?
 - Group 1
 - Group 2

Each group is supposed to nominate a person that takes notes and represents the results of the group work.

15:30-15:45

Coffee break

15:45-16:15

Presentation of the results of the group discussions by each group

Summary of results by the expert (sharing the screen): challenges and good practices by EMBs to meet hate speech

16:15-16:40

Marie-Carin von Gumppenberg, the Council of Europe expert

- **Presentation: International standards and good practices of EMBs in dealing with hate speech**

16:40-17:00

Summary of the results of the first day by the expert

Feedback on the first day by the participants (in person and online through survey)

Day 2: 15 June 2021

Session III: Related terms and statistics

Session IV: Hate speech and election campaigns

15:30-15:45 Related terms and statistics

- Welcome back by the expert
- Related terms: toxic talk, fake news

15:45-16:15 Hate speech and election campaigns

Marie-Carin von Gumppenberg, the Council of Europe expert

- **Presentation: Introduction to the topic of hate speech in election campaigns by the expert**

16:15-17:15

► **Brainstorming in groups (Zoom breakout sessions)**

1. What are the hate speech challenges in election campaigns?
2. What good practices are already applied to mitigate the identified challenges? What legal and non-legal instruments are already applied?
 - Group 1
 - Group 2

Each group is supposed to nominate a person that takes notes and represents the results of the group work.

17:15-17:30

Coffee break

17:30-17:50

Presentation of the results of the group discussions by each group

Summary of results by the expert (sharing the screen): challenges and good practices by EMBs to meet hate speech

17:50-18:15

Marie-Carin von Gumpenberg, the Council of Europe expert

- ▶ Presentation: **International standards and good practices of the Council of Europe member states dealing with hate speech in election campaigns:** towards a systematised approach
 - Regulations/legal framework
 - Voter education
 - Statements of renowned/respected representatives
 - Codes of conduct for political parties and media representatives
 - Court proceedings
 - Monitoring and reporting on hate speech in electoral campaigns
 - Online platform for reporting hate speech violations

18:15-18:30

Summary of results of the second day by the expert

Feedback on the second day by the participants (in person and online through survey)

Annex 2 – Syllabus

Training Course on Combating Hate Speech in Electoral Processes for Election Management Bodies

14 June 2021	
Session I: Hate speech – An introduction, and the Council of Europe legal and policy instruments	
Session Topic	Training materials for the session
Session I: Definitions, statistics, addressees, consequences	Definitions <ul style="list-style-type: none"> ▶ Hate speech ▶ Hate crime ▶ Discrimination ▶ Sexism Hate speech in Georgia <ul style="list-style-type: none"> ▶ Statistics: how relevant is hate speech for Georgia (ODIHR hate crime reporting – https://hatecrime.osce.org/georgia) Addressees of hate speech in elections <ul style="list-style-type: none"> ▶ Election Management Bodies, voters and election observer in elections ▶ Candidates and political party representatives in election campaigning Consequences of hate speech <ul style="list-style-type: none"> ▶ for the targeted individuals ▶ for the targeted institutions ▶ for the campaign environment
Session II: Hate speech and election management bodies	
Definitions, statistics and challenges	<ul style="list-style-type: none"> ▶ Information on hate speech against EMBs, voters and observers ▶ Elaboration by the training participants: hate speech challenges for EMBs
International standards and good practices of EMBs in dealing with hate speech	Good practices of Council of Europe member states <ul style="list-style-type: none"> ▶ Engage other stakeholders (government officials, prominent persons) ▶ Model good behaviour within the EMBs ▶ Speak out against discrimination and hatred ▶ Open space for pluralistic public dialogue ▶ Contribute to learning through public opinion surveys and focus groups in order to help EMBs better understand how, in what manner and to what extent hate speech impacts behaviour

	<ul style="list-style-type: none"> ▶ Monitor, collect and report data on hate speech ▶ Mitigate risk through security planning ▶ Adjudicate effectively and responsibly ▶ Train electoral stakeholders ▶ Raise awareness and educate voters <p>International standards (see List of training materials, below)</p>
15 June 2021	
Session II: Hate speech and election campaigns	
Definitions, statistics and challenges	<ul style="list-style-type: none"> ▶ Information of CEC, regulatory bodies and election watchdogs ▶ Elaboration by the training participants: hate speech challenges during election campaign
International standards and good practices of dealing with hate speech in election campaigns: towards a systematised approach	<p>Systematic approach countering hate speech in election campaigns:</p> <ul style="list-style-type: none"> ▶ Regulations/legal framework ▶ Voter education ▶ Statements of renowned/respected representatives ▶ Codes of conduct for political parties and media representatives ▶ Court proceedings ▶ Monitoring and reporting on hate speech in electoral campaigns ▶ Online platform for reporting hate speech violations

Annex 3 – List of training materials

▶ Council of Europe policy and legal instruments

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▶ ACE Project

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► **Online Conference on Hate News in Georgia**

Hate News vs. Free Speech: polarization and pluralism in Georgian media, conference in Berlin, December 2020, at www.disruptionlab.org/hate-news-vs-free-speech

► **Council of Europe list of e-learning courses – HELP hate speech course**

<http://help.elearning.ext.coe.int/course/index.php?categoryid=100>

Order form given to trainees on the Training Course on Combating Hate Speech in Electoral Processes for Election Management Bodies

N	Training materials	To be sent	To be printed
1	Council of Europe online compilation on hate speech www.coe.int/en/web/freedom-expression/hate-speech		
2	ODIHR hate crime reporting on Georgia https://hatecrime.osce.org/georgia?year=2019		
3	Online conference about hate news in Georgia www.disruptionlab.org/hate-news-vs-free-speech		
4	Council of Europe list of e-learning courses – HELP hate speech course http://help.elearning.ext.coe.int/course/index.php?categoryid=100		

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“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”

Article 10 of the European Convention on Human Rights

Freedom of expression is enshrined in the European Convention on Human Rights and protects citizens from interference with their right to freely express their opinions. This freedom is essential when it comes to the electoral process which, like any competition, has a strict framework of rules. Freedom of expression must not give rise to hate speech that would undermine the electoral process by polluting the campaign and political debate necessary for voters to make an informed choice.

This toolkit is intended to explain the international standards applicable in this respect, provide tools and strategies that can be used by election management bodies to counter hate speech harmful to free electoral competition and describe the Georgian experience in this area.

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